

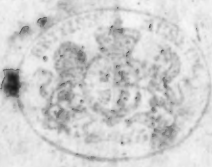
A
P L E A,
IN
VINDICATION
OF THE
CONNECTICUT TITLE
TO THE
CONTESTED LANDS,
LYING WEST OF THE PROVINCE
OF NEW-YORK,
ADDRESSED TO THE PUBLIC,
By BENJAMIN TRUMBULL, A. M.

NEW-HAVEN:

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• P L E A, &c,

P A R T I.

I N T R O D U C T I O N.

A CAUSE of equal magnitude and importance with that now depending between the colony of *Connecticut* and the proprietaries of *Pennsylvania*, relative to the western lands, was, probably, never litigated in *North-America*.

Not barely individuals, but whole colonies are interested in it. This colony in particular is *immediately* and *deeply* interested. There is not one of it's inhabitants who has not an interest depending in the controversy, and who will not be affected by the decision of it.

THE object in contest is certainly grand and important: a fine and extensive country, which, no doubt, both in quantity and value, greatly exceeds the whole we now possess east of the province of *New-York*, the improvements excepted.

SHOULD the claim of the colony be prosecuted to a legal and final adjudication and terminate in favour of *Connecticut*, the advantages to the community in general, as well as to individuals would, doubtless, be great, almost beyond any thing, of which, at present, we are well able to form an idea. These advantages would by no means be confined to the present age, but extend their happy influence to the latest posterity.

A CAUSE of such importance, of so general a nature, and with reference to which so many are obliged to
act

act either directly and immediately, or in a manner more indirect and remote, was, perhaps, scarce ever less understood by people in general. The greater part by far are so removed from the source of true intelligence, that they cannot, upon any certain ground, form a judgment with regard to this affair, which so nearly concerns the interest and happiness both of themselves and of their posterity.

THEREFORE it must be a matter of high necessity and importance, what duty and justice require, somewhat largely to consider the whole controversy, and to make a candid and full representation of it to the public, as founded on the most authentic records and history.

THIS I purpose to make the business of the following sheets.

IN order to effect this design with the greatest facility and advantage it will be natural,

- I. To give a fair and ample state of the case, with such reflections and observations as are necessary to set the claim and title of Connecticut in a just point of view.
- II. To obviate such objections as are thought to operate against them.
- III. It will not be improper to pay a little attention to some popular objections, which seem rather to be of a political nature, than to respect the title in dispute,

STATE OF THE CASE.

KING James I. by his letters patent dated April 10th, 1606, divided *Virginia* into two colonies: the southern, called the first colony, lying between 34 and 41 degrees of northerly latitude he granted to the London company: the northern or second colony, between 38 and 45 degrees of north latitude he granted to the Plymouth company.

Virginia
patents.

THE

THE south Virginia company in 1609 resigned their patent to the crown, and obtained a new grant, bounded north to the fortieth degree of northerly latitude from the equinoctial line. The grants to the south Virginia company were often either resigned, or considered as forfeited, and as often renewed, commonly with some alterations.

The first of these grants conveyed territory back inland from the sea 100 miles ; but afterwards the style was altered and they are described as running due west to the south seas, or as running from sea, to sea east and west. *

KING James I. by letters patent under the great seal of England bearing date November 3d. 1620, incorporated the duke of *Lenox*, the marquisses of *Buchingham*, and *Hamilton*, the earls of *Arundel* and *Warwick*, with divers other persons, by the name of *The council established at Plymouth, in the county of Devon, for the planting, ruling, ordering and governing of New-England in America* :---“ and granted to them, and their successors and assigns, all that part of *America*, lying and being in breadth from forty degrees of North latitude, from the equinoctial line, to the forty eighth degree of said northerly latitude inclusively, and in length of, and within all the breadth aforesaid, throughout the main lands from sea to sea ; together also with all the firm land, soil, grounds, havens, ports, rivers, waters, fishings, mines and minerals, as well royal mines of gold and silver, as other mines and minerals, precious stones, quarries, and all and singular other commodities, jurisdictions, royalties, privileges, franchises and preeminences, within the said tract of land upon the main, as also within the islands and seas adjoining.

New-
England
patent.

“ PROVIDED always--- That the said islands, or any of the premises by the said letters patent intended and meant to be granted, be not actually possessed or inhabited by any other christian prince or state, nor be within the bounds limits or territories of that southern

Proviso.

“ southern colony, heretofore, by us granted, to be
 “ planted by diverse of our loving subjects in the
 “ south part.

“ AND to the end that the said territories may for-
 “ ever hereafter be more particularly know and dis-
 “ tinguished, our will and pleasure is, that the same
 “ shall from henceforth be nominated, termed and
 “ called by the name of NEW-ENGLAND IN AMERI-
 “ CA, and by that name have continuance forever.

“ AND further, our will and pleasure is, and we
 “ do by these presents charge, command, warrant
 “ and authorise the said council, and their successors,
 “ or the major part of them, which shall be present
 “ and assembled for that purpose, shall, from time to
 “ time, under their common seal, distribute, convey,
 “ assign and set over such particular proportions of
 “ lands, tenements, and hereditaments, as are by these
 “ presents formerly granted unto each our loving sub-
 “ jects, natural born, or denizens, or others, as well
 “ adventurers as planters, as by the said company,
 “ upon a commission of survey and distribution, exe-
 “ cuted and returned for that purpose, shall be nam-
 “ ed, appointed and allowed ; wherein our will and
 “ pleasure is, that respect be had as well to the pro-
 “ portion of the adventurers, as to the special haz-
 “ ard, exploit or merit of any person to be recom-
 “ pensed, advanced or rewarded.”

By this company various grants were made out
 both to bodies of men and to individuals.

March

19th 1628

Summary
 of Massa-
 chusetts
 patent.

On the 19th of March 1628 they granted unto Sir
Henry Roswell, Sir John Young, knights, Thomas South-
cote, John Humphreys, John Endicott and Simon Whit-
combe, their heirs assigns and associates for ever, all
 that part of *New-England in America*, which lies and
 extends between *Merrimack river* and *Charles river*, in
 the bottom of *Massachusetts-Bay*, and three miles to
 the north and south of every part of *Charles river*,
 and three miles to the southward of the Southermost
 part of said bay, and three miles to the northward of
 every part of *Merrimack river*, and “ all lands and

“ here-

“ hereditaments whatsoever lying within the limits
 “ aforesaid north and south, in latitude and in breadth;
 “ and in length and longitude, of and within all the
 “ breadth aforesaid throughout the main lands there,
 “ from the *Atlantic sea* and ocean on the east part, to
 “ the south sea on the west part.”

KING *Charles I.* by his letters patent under the great seal confirmed this grant March 4th 1629.

ON the 19th of March 1631 *Robert* earl of *Warwick*, president of the council of *Plimouth*, under his hand and seal did grant and confirm unto the right honorable viscount *Say and Seal*, lord *Brook*, &c. to the number of eleven, and to their heirs, assigns and associates for ever, “ All that part of *New-England* in
 “ *America* which lies and extends itself from a river
 “ there called *Narraganset river*, the space of forty
 “ leagues upon a strait line near the sea shore, towards
 “ the *southwest, west and by south, or west* as the coast
 “ lieth towards *Virginia*, accounting three English
 “ miles to the league, and all and singular the lands
 “ and hereditaments whatsoever, lying and being
 “ within the lands aforesaid, *north and south* in *latitude* and *breadth* and in *length* and *longitude* of, and
 “ *within* all the breadth aforesaid, throughout all the
 “ main lands there, from the western ocean to the
 “ south seas; and all lands and grounds, soil, wood
 “ and woods, ground, havens, ports, creeks and rivers,
 “ waters, fishings and hereditaments whatsoever,
 “ lying within the said space, and every part and parcel thereof; and also all islands lying in *America*
 “ aforesaid in the said seas, or either of them on the
 “ western or eastern coasts, or parts of the said tracts
 “ of land by the presents to be given or granted.”

THIS territory president *Clap* says was granted to the earl of *Warwick*, by the council of *Plimouth* in 1630. *Neal* and *Douglas* agree, that it was confirmed to him, by his Majesty, under the Great Seal of *England* the same year. “ Governor *Hutchinson*
 “ saith, The earl of *Warwick* obtained a grant of the
 “ sea coast from *Narraganset river* to the southwest
 “ forty 160.

Manu-
 scripts of
 president
Clap.

Neal Vol.
 I. P. 148.
D. Vol. II
 P. 90, and

Hutchin-
son Vol. I.
P. 64. and
Vol. II. P.
203.

" forty leagues to keep the breadth to the south sea.
" This he assigned in 1631 to lord Say and Seal," &c.
ALL historians and writers 'till very lately, so far
as I am able to find, have been agreed with regard to
the location of this grant, and have described it as ex-
tending west to the south sea.

Manu-
scripts of
president
Clap.

PRESIDENT *Clap* describes it thus, " All that part
" of *New-England* which lies west from *Narraganset*
" river 120 miles on the sea coast, and from thence
" in latitude and breadth aforesaid to the south sea.
" This grant extends from point *Judith* to *New-York*,
" and from thence a west line to the south sea: and
" if we take *Narraganset river* in it's whole length
" this tract will extend as far north as *Worcester*. It
" comprehends the whole colony of *Connecticut* and
" much more."

NEAL gives the same account of this patent, and re-
presents it as running west to the south sea. Vol. I.
P. 148.

DOUGLASS saith, This grant was " east and west
" from sea to sea ; in length from sea to sea," &c.
Vol. II. P. 90 and 160.

THUS we see that governor *Hutchinson*, president
Clap, and Mr. *Neal*, truly great men, and intimately
acquainted with the history and geography of this
country, understood this grant, as extending westward
from *Narraganset river* to the south sea. This was
also *Douglass's* opinion unless by east and west he
meant north and south, and by the terms from sea to
sea, from the *Atlantic* ocean to unknown lands under
the North Pole, which it is entirely unreasonable to
suppose.

From P.
30 to 41.

MR. *Ingersoll*, and Dr. *Smith*, however, have lately
attempted an entirely different location of this grant,
and represent it as running off at right angles from the
sea, in a north west direction. The Dr. in his remark-
able performance spends more than ten pages to esta-
blish this favourite notion.

It will be necessary, for this reason, to say some-
thing further with regard to the location of the earl
of *Warwick's* patent.

WITH

WITH regard to this, let it be observed, that *Narraganset* river is expressly and indefinitely mentioned as the eastern boundary, and the land granted is no less expressly said to be all that part of *New-England*, which lies and extends itself from said river, forty leagues upon the sea shore, as the coast lies towards *Virginia* : not from any particular part of said river but from the whole of it. To pitch upon any particular part of said river or upon a mere point, will never satisfy the grant, or, in any manner comprise all the lands in *New-England* lying and extending from it to the westward. This therefore would be putting a very strained and ungenerous construction on the words, and would, at once, set the grant in such a point of view, that it would be impossible to reconcile the several terms of it ; or to understand them in any such sense, as they are commonly used in instruments of this kind, or indeed in any other. *Narraganset* river therefore in the whole length of it, or at least until it reaches the south line of the *Massachusetts*, must be the eastern boundary of the lands granted by the deed from the earl of *Warwick*, to lord *Say and Seal*, &c. and must be the breadth of the tract conveyed at said river.

THIS is further evident, in as much as some breadth was certainly given, otherwise no land would have been granted, nor yet would there have been any propriety or meaning in these words, " North and south in latitude and breadth," which, as terms of this import are commonly used, is nothing less than a most explicit declaration, that the breadth of the lands granted was from north to south. These terms suppose, and fully imply, a breadth already given in latitude north and south, which could be no other than the length of *Narraganset* river, or the breadth between a line running due west from the head of said river, and the south line by the sea, at the termination of the one hundred and twenty miles; which breadth thus acquired, was, in consistency, with the express words of the grant, to extend in length and longitude throughout

the main lands there from the western ocean to the south sea. That is, it was to leaye the *Atlantic* or *western ocean*, at the termination of the hundred and twenty miles, and to extend the whole breadth there acquired, in a due west line, to the great *Pacific ocean*, commonly termed the *south sea*; which was well known to be the western boundary of the *North-American* continent, and of *New-England*.

Douglas
Vol. II. p.
79.
Hutchin-
son Vol.
II. p. 203.
Further, that the boundaries on the east were as here represented, is most evident, in that it covered the territory, afterwards granted to the duke of *Hamilton*, which was bounded east on *Narraganset-Bay*, or river, west on *Connecticut* river, south on the sea, and extended up inland sixty miles, or to the *Massachusetts* south line. The colony of *Connecticut*, in their defence, before the commissioners of the crown, pleaded in exclusion of the right of said duke, "That the

This plea
is dated
March 25,
1665.

Dec. 13th
1683.

" original patent granted by royal authority to the
" lord *Say* and *Seal* and others, nobles and gen-
" tlemen which we purchased at a dear rate, is lately
" ratified and confirmed by our gracious sovereign,
" under the *broad seal of England*, the most *absolute*
" and *unquestionable* security of the English subjects,
" in which grant the lands fore-mentioned are com-
" prised." About eighteen years after in another
plea on the same subject, the governor and council say,
" The duke's claim, so far as it concerns us, is prece-
" ded some years by a grant from the right honorable
" *Robert*, earl of *Warwick*, to the lord *Say* and other
" persons of honour and credit, March 19th, 1631,
" whereas his grace's deed was made four years after,
" viz. on the 20th. of April 1635. By virtue of his ma-
" jesty's grant to the lord *Say*, &c. they and their assigns
" our *predecessors* did at their own proper charge about
" the year 1634, begin to enter upon the said lands,
" and so have continued ever since in actual possession
" and improvement thereof, without challenge or
" claim from duke *Hamilton*; which improvement
" hath been with great cost, hazard and labour of
" his majesty's subjects." They then make the same

repres

representation as in the former plea, that this patent had been confirmed to them by royal charter in 1662.

SOME years after the opinion of counsel was obtained on the subject, an abstract of which is in these words, " That these purchasers, by virtue of their purchases, and so long uninterrupted possession under them, have an undoubted right and title to these grounds and lands, and the buildings and improvements of them, and ought not now, after so much money laid out upon them, and such enjoyment of them, be disturbed in their possession of them."

This opinion seems to have been given about the year 1699.

FROM these authorities we see in what a point of light the patent to lord *Say and Seal*, &c. was considered but three years after the renewal of his majesty's letters patent to the colony of *Connecticut*, even by gentlemen who had been particularly conversant with these matters, and by the ancient men of the colony, as well as by learned counsel, during the last century. It is most evident that they understood the grant to the earl of *Warwick*, as covering all the land between *Connecticut* and *Narraganset* rivers, south of the line of the *Massachusetts*.

As to the extent of it westward to the south sea, it is no less evident from the same authorities : for if the grant to the earl of *Warwick* ran off in a northerly direction, at right angles with a strait line drawn upon the sea coast, as is so abundantly insisted by Dr. *Smith*, it can be said, but with a very ill grace indeed, that it was confirmed by the present charter to the colony of *Connecticut*. A charter conveying lands about seventy miles in breadth, due west, from *Narraganset-Bay* to the south sea, will confirm but a very small part of a territory forty leagues in breadth, from the *Atlantic* to the north pole, or to the frozen ocean. It would moreover be absolutely unaccountable, that an instrument draughted on purpose to confirm the grant of the earl of *Warwick* should run west to the south sea, unless this had been the direction of the original patent.

It

It is further worthy of special notice, that the earl of *Warwick's* grant specifies the lands granted, as lying and being in *New-England*; which reached on the north only to the forty eighth degree of north latitude, but on the west had for its known and established boundary the south sea. It cannot be supposed that the *Plimouth* company would grant lands without the limits of *New-England*, of which they had no patent themselves, and consequently had no power to convey them to others. Neither can it be supposed that the earl of *Warwick*, who was president of that company, and had the direction of every thing transacted by them, had so little understanding as to take out a patent for himself, of lands, the greater part of which, by far, was without the limits described in the great patent of the company; as certainly was the case, if the extension of it were not west, to the south sea.

ANOTHER thing which strongly operates against the notion of extending the length of the territory granted to the north or northwest, is the grant of his Majesty's patent to the province of *Massachusetts-Bay*, which was made out by the company, but two years, and received it's final ratification, under the great seal, but one year, before that to the earl of *Warwick*. It cannot, in reason, be supposed, that the council would in a year or two after make out another patent, which should cut that territory in two, nearly at right angles, which had been so recently conveyed to others. Neither is it supposable that his Majesty would treat his faithful subjects in so ungracious a manner, as to grant them lands one year, and without any provocation, convey them away, under the great seal, to others the next. This would make conveyances from the crown the most precarious and trifling things in the world.

FURTHER it may be well observed, that the words latitude and breadth, and in length and longitude, are used in a geographical sense in the great *New-England* patent, and in the *Massachusetts* old charter, and therefore

fore it is reasonable to understand them in the same sense, in the grant to the earl of *Warwick* ; especially, as the south sea is expressly mentioned as the western boundary of all these patents. When the same western boundary is affixed to all three of the grants, and they are all expressed in much the same terms, as having their breadth north and south in latitude, and their length in longitude, is it not most *absurd* and *whimsical* to suppose that one of them extends north or northwest, while the other are allowed to run east and west ! This will appear more *romantic* and *extraordinary* still if we consider, that on this supposition, the grants will cut each other in two, and we must suppose the most egregious mistakes and inconsistencies in the grantors, and that they used words and terms in such a sense, as no men of any tolerable acquaintance with letters, ever used them. But allowing, that the grant to the earl of *Warwick*, had the same direction, as to length and longitude with the other two, there is a perfect consistency in the whole affair. The several territories granted will extend regularly, and the words and terms used by the grantors will all have their just and natural construction. This therefore, according to all legal and approved rules of construing grants, which require, that they shall have such a construction as is most favorable to the grantees, and as shall make the grantors consistent, as far as may be at least, is the true construction and location of the grant to lord *Say* and *Seal*.

It needs only to be further remarked on this point, that the supposition of a north extension of the territory conveyed in the patent to lord *Say* and *Seal*, &c. cannot be maintained without sacrificing almost every term in the grant descriptive of the lands therein conveyed. The grant saith, " All that part of *New-England* in *America*, which lies and extends itself " from a river there, called *Narraganset* river" : But if we must turn off at right angles from the sea, there would not be so much as one foot of land lying and extending from said river, within the limits of the patent ;

patent ; it would be only touched at a certain point. These most fixed and well known terms *north and south in latitude and breadth*, must mean nearly *east and west*, or nothing at all, as the Dr. represents the matter * ; and the terms, *in length and longitude*, nearly *north and south*. By the words, *throughout the main lands from the western ocean to the south seas*, we must understand only sixty or at most seventy miles north, to the south line of the *Massachusetts*, or to the lands about the pole, or round the globe ; for it would never touch the south sea in the direction which he has given it. Thus the most determinate and well known words and phrases must be abused, tortured, and made to say nothing, any thing, or every thing, but what they ought to say, to maintain the *mere creature* of a fruitful imagination. Or shall we solve all these difficulties, at one bold stroke, by supposing that the clerk was ignorant and mistaken, and that the noblemen concerned in the business were so dull of apprehension, as never to advert to these egregious blunders ? This indeed seems to be what the Dr. would insinuate † : But is not this a most strained and illiberal imagination ? At this rate any grant upon earth might be construed wholly away, and be made entirely null and void.

THE reasons, which the Dr. alledges in support of this *extraordinary* opinion of the northerly direction of the grant to the earl of *Warwick*, are as *remarkable* as the opinion itself. Indeed *extraordinary* opinions must be supported by *rare* and *extraordinary* reasons.

One reason, which the Dr. urges in support of his opinion, is that each colony must have a sea front, and run off at right angles from the ocean § : this he insists was the original design of the grantors. However, I must confess, that I view all his learned labour upon this point, much in the same light, as if he had undertaken to prove by historical quotations, that the sun did not shine, at a certain time, when every man received the rays of it full in his face. It turns out unhappily for him indeed, that scarce a colony in the whole

* P. 36, 37, 38.

† P. 36.

§ P. 34. 36. and in other places.

whole *North-American* continent fronts the sea in this manner. The *Massachusetts* and *North-Carolina* come the nearest to it of any of the colonies, but neither of these runs off precisely at right angles from the sea.

The direction of all the old colonies, granted by the *London and Plimouth companies*, is directly east and west, in lines, parallel with the Equator. This is the direction of the *Massachusetts* colony, of *Connecticut*, of *Virginia*, of *North and South-Carolina*, and of *Georgia*†. Yea, the modern colony of *Pennsylvania* has the same direction, and labours under this great inconvenience, which he urges against the construction I have put on the grant to the earl of *Warwick*, viz. that it does “not run off from the sea in front, but from a river “and land line”. These arguments, perhaps, will have more weight, when Mr. *Ingersoll* and Dr. *Smith* shall make it appear, that the *American* colonies have the direction, for which they contend, and shall point us to the important reasons why a side line on the sea is not as good as a front line.

THE Dr. urges as further reasons for his manner of locating the grant, that the breadth of it is its very essence, and that it is impossible to keep this breadth in any other construction; and, that if we depart from this, we shall leave out of the patent the lands granted to the duke of *Hamilton*, yea leave out of it *Hartford* our capital, &c. But these difficulties are all avoided by the easy and natural construction which has now been given of the patent. In this location of it the difficulties all vanish at once. p. 32, and 36.

In a word, was there ever a more idle *whim*, than that of extending the grant of the earl of *Warwick* northwest to the south sea? It may indeed reflect some honor upon the imagination of the gentlemen who first conceived it, but whether it will do equal honor to their judgment, is submitted at the tribunal of the public.

HAVING

† See the location of these colonies in the most modern and accurate maps: particularly *Wright's* map in his history of the late war: and Mr. *Wyn's* in his history of *North-America*. Also consult *Douglas's* Vol. I. P. 114.

HAVING attempted a location of the old *Connecticut* patent, it will be proper to observe that under this the first planters of *Connecticut* began their settlements.

Records
of the u-
nited co-
lonies
1653.

THE *English* discovered *Connecticut* river, when the *Dutch* had neither trading house, nor any pretence to a foot of land there.

Hutchin-
son.

Prince
Part II, p.
95.

IN 1632, they determined to build a house for the convenience of trade with the natives, at the mouth of the little river, in *Windfor*; and making a considerable purchase of lands there of *Zequasson* and *Natawanute*, two principal sachems, they erected a house the next year, fortified it and ever after maintained their ground on the river.

THE *Dutch* receiving intelligence of the design of the *English* to settle on the river, got in just before them, built a small fortification at *Hartford*, planted two pieces of cannon, and threatened to fire upon them if they should attempt to go up the river. They proceeded nevertheless and built on the land they had purchased.

June 28.
1633.
Records
of the u-
nited co-
lonies.

The *Dutch* made a pretended purchase of a small plat of about twenty acres, of a *Pequot* captain who sold it out of the hands of the original proprietors, under the pretence of a right by conquest. The same year they built the *Dutch* house called THE HIRSE OF GOOD HOPE. This, so far as I can find, is the only *Dutch* house ever built in the colony, in those ancient times.

Governor
Win-
throp's
diary.

Mr. *Winthrop* governor of the *Massachusetts-Bay* the same year sent an express to *Walter Van Twilly*, governor of *New-Netherlands*, representing, "That the king of *England* had granted the river and country of *Connecticut* to his own subjects, and therefore desired them to forbear to build there." Nevertheless they persisted in building and fortifying.

THE *Pequot Indians*, a tribe the most distinguished for military prowess of any, at that day, in *North-America*, about the year 1630 or 31, made a conquest of the most, if not of the whole of *Connecticut*. They extended their conquests up the river as far as *Suffield*, and

and to the westward as far as the Dutch settlements. They nearly extinguished the *Indians* at *Quillipiack*, since *New-Haven*, and conquered some part of the *Narraganset* country. The *Pequot sachem*, was the GRAND MONARCH of the country, and had under him no less than six and twenty *Indian* kings or sachems.

Hubard's
narrative
of Indian
troubles;
& govern-
nor Win-
throp's
diary.

IN 1634 this potent nation gave up to the *English* their right to the river *Connecticut* and the adjacent country, in a formal treaty.

THE next summer a settlement was begun at *Wethersfield*, and in October about sixty men, women and children, from *Watertown*, *Dorchester* and *Newtown* moved to the river. They settled at *Wethersfield*, *Windsor* and *Hartford*. In November Mr. *John Wintthrop* junior, agent for their lordships *Say* and *Seal*, *Brook*, &c. arrived at the mouth of the river and began the fort at *Say-Brook*. The next spring Mr. *Hooker* and his company moved to *Hartford*.

Oct. 15,
1635.

June 1636

THE *Pequot* Indians commencing hostilities against the *English*, *Connecticut* sent captain *John Mason*, with a number of troops, against them. The captain took one of their principal fortresses, and put about seven hundred of the enemy to the sword. *Sassacus* the great sachem of the *Pequots* and his warriors were, upon this, struck with such a panic that they destroyed their capital and fled to the westward. The *English* pursued them as far as *Saco*, a great swamp in *Fairfield*, where they obtained a compleat victory, and the country east of the *Dutch* settlements became theirs by right of conquest.

May 26,
1637.

IN this pursuit the first planters became acquainted with all the country on the sea coast, from *Say-Brook* fort to *Fairfield*, and reported that it was very fine and inviting. Governor *Eaton*, on this report, with some others of his company, came from *Boston* the next fall and viewed *Quillipiack* and the adjacent parts, and carried back favorable accounts of the country. The Governor and his associates determined on a settlement at *Quillipiack* and wrote to their

1820
1638
182
Records
of New-
Haven.
April
1638.

friends

friends at *Connecticut* on the subject, and, obtaining their consent, the next spring, began a settlement at *New-Haven*.

1639. BOTH colonies, by voluntary compact formed themselves into distinct commonwealths.

As early as 1638 and 1639 settlements were made under *Connecticut* at *Unquowa*, *Fairfield*, and at *Poquonock*, *Stratford*. At the same time *Menuncatuck*, *Guilford*, was settled by Mr. *Henry Whitefield* and his company, under the jurisdiction of *New-Haven*: and a number of planters, from *Wethersfield*, purchased and settled *Milford*.

1640. The *Connecticut* planters in 1640 made a purchase, and began a settlement at *Poquam*, *Norwalk*. The same year some of the *New-Haven* planters purchased of the natives *Rippowams*, *Stamford*, and *Totoket*, *Branford*. They had made a purchase of *Quillipiack* the year before. This included part of *Wallingford*, anciently called *New-Haven* village. These were all the purchases ever made by the *New-Haven* adventurers east of the Dutch settlements.

In 1640 *New-Haven* sold *Rippowams* to the planters at *Wethersfield*, who began a settlement there under the jurisdiction of *New-Haven*.

In 1644 some of *Wethersfield* people purchased *Totoket* of *New-Haven*, and began a settlement there, under the jurisdiction of that colony.

The *Connecticut* adventurers in 1640 made a purchase of *Tunxis*, *Farmington*. In 1644 they purchased of *George Fenwick*, Esq; agent of lord *Say* and *Seal*, lord *Brook*, &c. the right of their lordships to the colony of *Connecticut*, for £. 1600.

Records
of Con-
necticut,

In 1645 they made a purchase of *Mattabeseck*, *Middletown*, and began a settlement. The next year they made a grant of *Naumeaug*, *New-London*, to a number of planters. Under this name was comprised part of the present town of *New-London*, and all that territory on the sea shore between *Paucatuck* river and *New-London*, afterwards called *Pequot*; as this tract was the chief seat of the *Pequot* nation.

ABOUT

ABOUT this time several of *Hartford* people purchased *Warranoke*, *Westfield*, and begun a plantation there. Upon this a dispute arose between *Connecticut* and the *Massachusetts*, both colonies claiming it as lying within the limits of their patent. The affair had a publick hearing before the commissioners of the united colonies, in whose presence governor *Hopkins* and Mr. *Wells* declare, with regard to the old *Connecticut* patent, "That the honorable committee of parliament had given equal respect to it as to the patent of the *Massachusetts*, which their honored friends of that colony well knew." This sheweth that *Connecticut*, at that day, esteemed themselves vested with all the right and title which the old patent of *Connecticut* could convey to the territory therein described; and considered the patent as being entirely their own, and pleadable, to all intents and purposes, in vindication of their title to the lands comprised within the limits of it. This sheweth that it was looked upon as authentic, so far as it respected the property of the soil, as any grant whatsoever, not only by themselves, but by the government at home. Their conduct ever after this until the renewal of their charter speaketh the same language.

Records
of the u-
nited co-
lonies
1649.

IN 1651 *Connecticut* extended jurisdiction to *Southerton*, afterwards named *Stonington*, and declared "That the right of that place did clearly appertain to this colony."

Records
of Con-
necticut,
1651.

DURING the war with the States General, *Connecticut* dislodged the *Dutch* from their possessions at *Hartford*, after which they had never any footing in the colony.

1654.

IN 1659 they made a grant of lands at *Quinibaug* and took the inhabitants under their government. The same year they extended their jurisdiction to *Long-Island*.

1659.

MAJOR *John Mason*, as agent of the colony, having made a purchase of all the lands of the natives, which had not been purchased before by particular towns, made a publick surrender of them to the colony in the presence of the general assembly.

March 14
1660, 1.

THIS

THIS is a true representation of the first settlement of *Connecticut*, founded on the most authentic records. The conquest of the *Pequots* was extensive, and spread the *English* title over all the lands within the plantation of *Connecticut*; not only over those lying on the river and to the eastward of it, but to the westward as far as the *Dutch* settlements. However the *English*, to remove all grounds of complaint and uneasiness, purchased the lands also of the original proprietors for valuable considerations; and to maintain peace and amity were obliged to make them valuable presents from time to time of coats, kettles and various utensils. They gave them lands to plant on, made laws for their protection; and, as there was no trust to be put in them, were obliged after all at great expence, to fortify against them in every plantation, and to keep watch and ward night and day by turns for many years. In making settlements in this manner, in a wilderness they buried great estates: It has been given as the opinion of good judges, who have had the most thorough acquaintance with these ancient transactions, that some of the adventurers of good fortunes spent more in making a settlement in the country than all the lands and buildings they possessed would sell for, even at this day with all their improvements.

661. HAVING thus settled a number of towns in various parts of the colony, and purchased the native right to the greatest part, if not the whole of the land lying to the eastward of the *Dutch* settlements, they presented a petition to his majesty king *Charles II.* representing the purchase they had made of the natives, the conquest of the *Pequots*, their great expence in building, fortifying, and settling in a wilderness so remote from the christian world; and especially that they had “ laid out a very great sum for the purchasing a jurisdiction right of Mr. *George Fenwick*, which they were given to understand was derived from true royal authority by letters patent to certain lords and gentlemen therein nominated,”
praying

praying in these words, " May it therefore please your
 " most excellent and gracious majesty, to confer up-
 " on your humble petitioners, who unanimously do
 " implore your highness's favor and grace therein,
 " those liberties, rights and authorities and privi-
 " leges, which were granted by the aforementioned
 " letters patent, to certain lords and gentlemen so
 " purchased as aforesaid, or which were enjoyed from
 " those letters patent granted to the *Massachusetts*
 " plantation."

" May it please your majesty graciously to bestow
 " upon your humble supplicants, such royal munifi-
 " cence according to the tenor of a draft or instru-
 " ment, which is ready here to be tendered at your
 " gracious order."

UPON this petition his majesty issued his letters
 patent under the great seal ordaining that the colony
 of *Connecticut* should for ever hereafter be one body
 corporate and politic in fact and name, confirming
 to them said ancient grant and purchase, for the very
 reasons set forth in their petition, in the words fol-
 lowing, " Know ye further that we of our abundant
 " grace, certain knowledge and meer motion, have
 " given, granted and confirmed, and by these presents,
 " for us our heirs and successors, do give, grant and
 " confirm unto the said governor, and company, and
 " their successors, all that part of our dominions in
 " *New-England* in *America*, bounden on the east by
 " *Narraganset* river, commonly called *Narraganset*
 " bay, where the said river falleth into the sea : And
 " on the north by the line of the *Massachusetts* plan-
 " tation, and on the south by the sea : And in lon-
 " gitude as the line of the *Massachusetts* colony, run-
 " ning from east to west : That is to say from the
 " said *Narraganset* bay on the east, to the south sea
 " on the west part, &c. And lastly, we do for us,
 " our heirs, and successors, grant to the said gover-
 " nor and company, and their successors, by these
 " presents, That these our letters patent shall be firm,
 " good, and effectual in law, to all intents, construc-
 " tions,

“ tions, and purposes whatsoever, according to our
 “ true intent and meaning herein before declared, as
 “ shall be construed, reputed, and adjudged most
 “ favorable on the behalf, and for the best benefit,
 “ and behoof of the said governor and company and
 “ their successors.”

AGREEABLY to the genuine meaning and most natural construction of the boundaries specified in the charter, the true location of the grant is this, bounded on the east by *Narraganset* river, termed *Narraganset Bay* where it falleth into the sea *; on the north by the south line of the *Massachusetts*, running due west; on the south by the sea, so far as it was, at that time, a southern boundary to any part of the king's dominions in *New-England*. This is fairly implied if not expressed in these words, “ All that part of our
 “ dominions in *New-England* bounden on the south
 “ by the sea”; and then running, agreeably to the charter, all the breadth between the *Massachusetts* south line and the said southern boundary, in longitude, west to the south sea. If we should leave the sea at any place short of *that*, in which it ceaseth to be a southern boundary to the king's dominion in *New-England*, west of *Narraganset Bay*, it can by no means satisfy the grant.

Again when it is said, “ *And in longitude as the line
 “ of the Massachusetts colony, running from east to west,
 “ that is to say from the said Narraganset Bay on the
 “ east, to the south sea on the west part,*” the import can be nothing less, than that it shall run the given breadth

* *Narraganset Bay* and *Narraganset river* are frequently used in ancient writers for *Narraganset* river at large, as terms synonymous. Sometimes the term, *Narraganset* river, was used to signify both the river and bay, and at other times *Narraganset Bay* was used to signify the same, not barely the bay but the whole river. *Narraganset Bay*, was the name of the river at that place where it empties itself into the sea. That *Narraganset* river at large was intended, and not a mere point where it falleth into the sea, is evident from governor *Winthrop's* and Mr. *Clark's* agreement in 1663, and from the *Rhode-Island* charter, in which it is stipulated and ordered, “ That *Panecatuck* river
 “ shall be the certain bounds between these two colonies, and
 “ shall for the future be called *Narraganset* river.”

breadth all the way to the western ocean, in a direction parallel with the equator. These boundaries were notorious. The south line of the *Massachusetts* had been most expressly described in their charter. No boundary could be more definite than *Narraganset river*. No less notorious are the two *seas* on the south and west of *New-England*. And again what can be more determinate than the *breadth*, between the sea which bounds *New-England* on the south from *Narraganset Bay* westward and the line of the *Massachusetts*? With what solidity or candor then does the Dr. say the limits of the *Connecticut* charter, "Are in the following, *confused, defective, and unintelligible* words." Might I not with equal truth and generosity say the same of the grant of Sir *William Penn*, or of any other? Is *Delaware river*, or is the beginning of the forty third degree, &c. in his patent more determinate than the limits of *Connecticut*?

THE *Connecticut* patents being thus stated, and their true location fixed, it will be proper to take notice of the principal facts which are supposed to operate against them. I shall begin with the settlement made with the *Dutch*.

THE proviso in the *New-England* patent, excepted such lands out of the grant as were then in the actual possession of any christian prince or state. The *Dutch* at the time, when said grant was made, were in actual possession of *Hudson's river*, and of some parts adjacent. This possession was surreptitiously taken, against the repeated remonstrances of the *British* court, and was even disavowed by the States General. However as it had been taken and continued, a settlement of limits, with them, became necessary. This was effected in 1650. The bounds upon the main were to begin at the west side of *Greenwich bay*, being about four miles from *Stamford*, and to run a northerly line up twenty miles into the country.

On the 12th of March 1664, king *Charles II.* by his letters patent granted to his royal brother, *James*, duke of *York*, "*Hudson's river*, and all the land from the

Smith's
history of
New Jersey.

the west side of *Connecticut* river, to the east side of *Delaware Bay*, together with all the lands, soils, islands, &c. And all his estate, right, title, interest, benefit, advantage, claim and demand of, in or to the said lands and premises, or any part or parcels thereof." Other lands were included in the patent, but do not affect the present controversy. The same year colonel *Nicolls* dispossessed the *Dutch*, and entered upon their territory, in behalf of the duke of *York*. This made it necessary to make a settlement of boundaries with the said duke. Commissioners were appointed for that purpose, who did order and declare, " That the creek or river called *Momoronock*, " which is reputed to be about twenty miles east of " *West-Chester*, and a line drawn from the east point " or side, where the fresh water falls into the salt, at " high water mark, north northwest to the line of " the *Massachusetts* be the western bounds of the said " colony of *Connecticut*." All plantations to the westward of said creek and line were to be under the government of his royal highness, and all to the eastward to be under the government of *Connecticut*. To this settlement governor *Wintrop* and the other commissioners of *Connecticut* subscribed in these words: " We under written on behalf of the colony of *Connecticut*, have assented unto the determination of his " majesty's commissioners, in relation to the bounds " and limits of his royal highness the duke's patent, " and the patent of *Connecticut*."

June 30th
1673.

Smith's
history of
New-
York.

COLONEL *Nicolls* presided three years at *New-York*, which time was spent principally in examining and settling the ancient *Dutch* grants and claims. Nine years after, the *Dutch* recovered their former possessions, at *New-York*, and revived their government. However, on a treaty of peace, the next February, they were restored to the crown of *Great-Britain*, and his majesty renewed letters patent to the Duke, on the 29th of June 1674, in the very words of the former, differing in nothing but the date.

Ten years afterwards the boundaries between his
Royal

Royal Highness, and the colony of *Connecticut*, were settled at *Byram river*, between the town of *Rye* and *Greenwich* †, to run parallel with *Hudson's river*, at twenty miles distance : To which the parties agreed as followeth,—" And if it please the king's majesty, and his royal highness to accept and confirm these articles, they shall be good to all intents forever, between his royal highness, his heirs and assigns, and the corporation of *Connecticut*, and their successors." Of this line there was made an actual survey, by commissioners, mutually appointed, the same year : and upon an *ex parte* application from *New-York*, it was, on the 28th of March 1700, confirmed by his majesty, king *William*, in council.

KING *Charles II.* by royal charter did give and grant, unto Sir *William Penn*, his heirs and assigns, " All that tract or parcel of land in *America*, with all the islands therein contained, as the same is bounded on the east of *Delaware river*, from twelve miles northward of *New-Castle* town, unto the three and fortieth degree of northern latitude; if the said river doth extend so far northwards : then by the said river so far as it doth extend, and from the head of the said river the eastern bounds are to be determined by a meridian line, to be drawn from the head of the said river, unto the said three & fortieth degree. The said lands to extend westwards five degrees in longitude to be computed from the said eastern bounds ; and the said lands to be bounded on the north by the beginning of the three and fortieth degree of northern latitude, and on the south by a circle drawn at twelve miles distance from *New-Castle* northwards, and westwards, unto the beginning of the fortieth degree of northern latitude, and then by a strait line westward to the limits of longitude above mentioned. To have, hold, possess, and enjoy unto the said *William Penn*, his heirs and assigns forever," &c.

Sir Wm.
Penn's
patent,
1681.

† This is nearly the line, of which an accurate description is not material, in the present case.

IN 1680, the honorable BOARD OF TRADE AND PLANTATIONS, sent this, among other queries to the governor and company of the colony of *Connecticut*, viz. "What are the boundaries, longitude, latitude, and contents of land within your government?" The governor and company made answer, "Our boundaries are expressed in our charter." The same question has been repeatedly asked since that time, and ever hath been answered as above, two or three instances, at most, excepted.

THE capital facts, on which, the interesting cause, depending, between the two colonies of *Connecticut* and *Pennsylvania*, must receive a final decision, are now brought into view, and a few remarks will prepare the way for reasoning on the subject, from the great and general principles, by which it must, at last be determined.

REMARKS.

It is to be remarked, That agreeably to the state of the case now made, which is founded on facts the most unyielding and stubborn, the grant to the earl of *Warwick*, confirmed and made over to lord *Say and Seal*, extended far beyond the western boundary of the province of *New York*, and covered a very considerable part of the territory afterwards granted to Sir *William Penn*: That the grant made to the earl of *Warwick*, and confirmed as above, was ratified and confirmed by the king's majesty, at complete half century, before the grant of letters patent to Sir *William*: And, that this patent after the consignment of it to lord *Say and Seal*, and after the purchase of it, by the *Connecticut* planters, was considered by the greatest men of that day, in both *Englands*, as being of equal force and validity, with the patent of the *Massachusetts*, or any other, whatsoever, so far as it respected the fee and property of the lands comprised within the limits of it.

AGAIN, it should be remarked, and particularly observed, That the charter of the colony of *Connecticut* was

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was granted upon an express petition to his majesty, that the patent granted to certain lords and gentlemen, and purchased by the Connecticut planters, with all those liberties, rights and authorities and privileges granted to them, might be conveyed and made over to the governor and company of the colony of Connecticut: And also, that it might be "according to the tenor of a draught or instrument ready to be tendered at his majesty's gracious order," which, beyond all doubt, was the present charter of the colony of Connecticut.

Further, let it be remembered, That Connecticut in their pleadings against duke Hamilton, but three years after the grant of their letters patent, declare it as a matter of the most certain notoriety; "that the ORIGINAL PATENT granted by royal authority to the lord Say and Seal and others, nobles and gentlemen, which they purchased at a dear rate, is ratified and confirmed by our GRACIOUS SOVEREIGN, under THE BROAD SEAL OF ENGLAND:" And that it was so accepted by learned counsel, and an opinion given accordingly: And, that the governor and council, in their plea on the same subject, in 1683, declared, "that our predecessors, the assigns of lord Say and Seal, and other persons of honor and credit, did, at their own proper charge, enter upon said lands;" that is, the lands granted in the deed to lord Say and Seal, lord Brook, &c.

Further I would observe, as an additional evidence of this, that they say, "We had purchased lord Say's patent," and that "his present majesty (Charles II.) understanding the condition of his subjects in this colony, upon our humble address, April 23d, 1662, was graciously pleased to grant us a charter for holding the lands therein granted firm to us and our successors for ever: and, in his letter dated April 23d, 1664, sent to us, by his majesty's honorable commissioners, he is pleased to call his grant a renewing of our charter, which must relate to that grant made by the earl of Warwick, in the year 1631: for we had no other before his majesty's grant and confirmation aforesaid." It

Mr. Saffin's answer Nov. 1683.

It may be observed as a further proof of this point, that Mr. *Saffin* in his answer to duke *Hamilton's* claim before his majesty's commissioners of enquiry, in 1683, says, the patent to lord *Say* and *Seal*, was purchased and improved by the colony of *Connecticut*; and represents that Mr. *Wintthrop* presented a copy of it to his majesty in council, when he obtained the charter. He saith further, That "the lord chancellor *Hide* declared, The lords *Say* and *Brook's* title "to be good and unquestionable," and represents, that upon this the charter of *Connecticut* was granted.

THESE authorities clearly evince that the title to all the lands within the limits of the patent to lord *Say* and *Seal* was considered as vested in the *Connecticut* planters, and that they were viewed as the true and proper assignees of his lordship to all intents and purposes before the charter was granted.

MOREOVER the conduct of the assembly, before the renewal of his majesty's letters patent, in granting lands in all parts of the colony, in extending jurisdiction, appointing courts, and in pleading this patent, as they did in all disputes with regard to boundaries, gives demonstrative evidence that this was indeed the case, in their own apprehension.

Camden's opinion 1761.

THIS title, let it be further remarked, was amply ratified and confirmed by his majesty's charter to the colony of *Connecticut*. This charter extends to the south sea, as did the original grant to the earl of *Warwick*, and covers a large tract of country west of the province of *New-York*. Lord *Camden* grants that this was the original boundary of *Connecticut*, and that for this reason, *Connecticut* must have notice and be heard on the subject in order to a final settlement of the controversy. And have not the proprietaries themselves made an ample concession of this, in their memorial to the king in council, some years since, praying for a decision and settlement with regard to the contested lands?

BESIDES it is worthy of special attention that his majesty in his renewed letters patent hath made this
royal

royal declaration, "These our letters patents shall be
 "firm, good, and effectual in law, to all intents, con-
 "structions and purposes whatever, as shall be con-
 "strued, reputed, and adjudged most favourable on the
 "behalf, and for the best benefit, and behoof of the
 "said governor and company and their successors."

IN the last place let it be remarked, that nine-
 teen years after this ample grant under the great seal
 of England, to the colony of *Connecticut*, after all this
 expence in making settlements in a wilderness, and
 after so much done for his majesty's service and for
 the enlargement of his dominions in *America*, Sir
William Penn obtained a charter which encroached on
 the rights of *Connecticut*, running across the territory
 granted to them nearly at right angles, for the space
 of about two hundred and sixty miles. This lays the
 foundation for the present controversy.

Indeed should I use the same liberty with the
 charter of Sir *William*, which the inventive Mr. *Ingersoll*
 and Dr. *Smith* have been pleased to take with
 the *Connecticut* patents, it would be easy to remove all
 objections at once, and set the claim of the colony in
 a point of view in which it could find no rival. I
 should argue, in my turn, that the words *north* and
south could have no meaning, and that the mention
 of the northern extremity of *Delaware* river, as a
 boundary on the north, was a blunder in the scribe.
 I should insist, cutting short the grant to Sir *William*,
 less by some thousands of miles than they have those
 of *Connecticut*, that by the beginning of the forty third
 degree nothing could be meant, but the south line of
Connecticut. On the important principle which they
 advance, that every colony must have a sea front, and
 not run off from a river and land line, I might prove
 that *Pennsylvania* is not a colony, and that it was ne-
 ver designed it should be: for surely it hath no
 sea front, which they seem to represent as essentially
 necessary to the very being of the old *American* grants.*
 Indeed should I adopt the same generosity with regard

to
 * Examination of *Connecticut* claim p. 34, 35, 36, 38, 39,
 and 40; where all these rare notions may be found.

to the construction of the charter of *Pennsylvania*, which they have very liberally used with regard to the patents of *Connecticut*, I should insist that the proprietaries have no land west of *Delaware* river within the limits of *Connecticut* patent: for the whole territory and all the islands granted in their charter, as expressly described in a particular clause of it, lie east of the river *Delaware*, in the province of *New-York*. This is the description, "All that tract or parcel of land in *America*, with all the islands therein contained as the same is bounded on the east of *Delaware* river." Agreeably to this description of the lands in their patent *Connecticut* would at once be set at liberty from all controversy with the proprietaries: *New-York*, and not *Connecticut*, would be involved in the dispute.

Other clauses there are in the charter which represent the territory granted as lying all west of the river *Delaware*. This is mentioned as its eastern boundary, and the land described is to extend from it to the westward five degrees. Now to which of these clauses are we to attend? Where does the land described lie? On the east side of *Delaware* river, in the province of *New-York*, or on the west side within the patent of *Connecticut*? If it should be urged that it lies to the westward of said river, what shall we do with these words, "as it is bounded on the EAST OF *Delaware* river"? Who can reconcile this clause with the other terms of the grant which make *Delaware* the eastern boundary? These terms and clauses are certainly sufficiently contradictory and inconsistent; but there are others in the charter which seem even to exceed these. A subsequent clause runs thus, From twelve miles north of *New-Castle* town to the three and fortieth degree of northern latitude. But is it possible to reconcile this with another part of the same sentence, viz. "The eastern bounds are to be determined by a meridian line to be drawn from the head of the said river unto the said three and fortieth degree," since the head of the said river is

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far north of the said three and fortieth degree? Again, how can the clause above be reconciled with this, "The said lands to be bounded north by the beginning of the three and fortieth degree of northern latitude." In short to make the best of this patent is it not a most *vague, confused, inconsistent* business? May I not boldly affirm that no consistent sense or meaning can ever be found for several parts of it? At one time it declares that the beginning of the three and fortieth degree is to be the northern boundary, to be sure if it doth extend so far north; yet, afterwards, it sayeth, "if it doth extend so far north the eastern bounds are to be determined by a meridian line drawn from the head of said river to the said three and fortieth degree." That is, the eastern bounds are to be further north than the utmost northern bounds, and the said meridian line must be drawn from the forty third degree to the same forty third degree? But will it not puzzle the greatest mathematician to draw this line? To be sure unless he should draw it to the opposite side of the globe.

ANOTHER *great* objection, would on these principles arise against the opinion that it was ever designed to make them a grant of such a territory as is described in their patent, particularly that it has more sides than four, and is such an *odd, uncouth, illshapen* thing for a colony, as was never before thought of; having a circle for part of it's southern boundary. However I will not insist on these things. The patent of Sir William shall be treated with generosity and candor, and be allowed to have it's full operation.

REASONINGS ON THE TITLE.

THE way is now prepared on the surest footing to argue the validity of the title of *Connecticut* to the contested lands.

HAD the king, at the time when letters patent were granted to Sir William Penn, been actually vested with the

the right of said lands, then it is true that the charter of Sir *William* would be pleadable against the claim of *Connecticut*; but as the king by previous grants had conveyed the same lands under the great seal to others, it is most absurd to suppose, that without any forfeiture or surrender of the prior grant, or any public act or process against it, making it null and void, he could make an effectual conveyance of it to any person whatsoever. All the right, of which the king could possibly be possessed, in 1620, when the great patent of *New-England* was issued, by royal authority, actually passed from the sovereign, and became vested in fact in the great *Plimouth company*. To suppose that the right and title to said lands did, or could remain in the sovereign after said grant, is in effect to say that nothing was conveyed or granted; or that royal grants and conveyances are mere nullities, and that title and property remain after they are most amply made and confirmed, just as they were before; than which there cannot be a greater absurdity; nor yet a greater reflection upon crowned heads. But if the right and title did pass from the king to the *Plimouth company*, then it most certainly passed also from them to the earl of *Warwick*, and to lord *Say and Seal*, &c. and, also to the colony of *Connecticut*, as there is the clearest evidence, that said patent to the earl of *Warwick*, of which he made a consignment to lord *Say and Seal*, &c. was purchased by the *Connecticut* planters and confirmed to them, by royal authority, in their renewed letters patent.

FURTHER the king having once made a conveyance of his right could not resume said right and become again vested with it, without some forfeiture, surrender, or legal process, for much the same reasons, as he could not remain vested with the title and property after he had made royal conveyances of them to his subjects. If the king hath a right to resume his own grants at all, he hath a right to do it immediately, in one moment after they have passed the great seal, as well as a year, or twenty, or a hundred years after.

But

But to suppose this, is in fact to suppose, as before; that grants from the crown are of no validity or importance, and that colonies are just as well without them, as with them; which may by no means be supposed.

BESIDES, we have the royal declaration under the great seal, that the charter shall be *firm, good, and valid in law, to all intents, constructions and purposes whatsoever*, which must mean that the patent shall be pleadable in point of law, and that the title to the lands therein conveyed shall be tenable in strict law, and be determined by it, to all intents and purposes, as far as in any legal conveyance whatsoever. Therefore it will follow, that by said patent, title was in fact and law confirmed, and all done by the king which he could do to vest the title in his subjects, the governor and company of *Connecticut*, and that it could not in any sense remain in the king or be resumable by him. For in all legal grants the right and title do actually pass from the grantor to the grantee, and are not to be, nor can be resumed by the grantor. A thousand deeds of conveyance after the first is well executed, are of no validity or significance. Therefore, in this view is it not most evident, that the right and title to the lands, comprised within the limits of the charter of this colony, beyond the western boundaries of the province of *New-York*, are vested in the governor & company of said colony, and ever have been, in the most ample manner, at least, since the renewal of his majesty's letters patent to said colony? And is it not equally evident, that the *modern charter* of Sir *William Penn*, can be of no force or validity, nor on any fair ground be pleadable in law or equity against said title? It could not be in the power of the king to make an effectual conveyance to him, of that which he had before so clearly and amply granted to the colony of *Connecticut*. This conclusion I conceive to be well grounded on the facts and reasonings above; and I think myself particularly happy in this respect, that counsel of the greatest learning and eminence, in

the law department, in the nation, entirely agree with me in opinion on this interesting point. They do not allow that there is even the least ground to contend that the grant to Sir *William* is of any manner of force or validity, or even so much as fairly pleadable, with regard to the disputed territory. I shall conclude this part of my essay with their opinion, which is clear, full and express to the point in hand. "As the charter to *Connecticut*, was granted but eighteen years before that to Sir *William Penn*, there is no ground to contend, that the crown could at that period make an effectual grant to him of that country which had been so recently granted to others."

P A R T II.

OBJECTIONS ANSWERED.

HAVING in the preceding part attempted a state of the capital facts, relative to the claim of *Connecticut*, to the western lands, comprised within the limits of their charter, and suggested some thoughts on the validity of said claim, I shall now address myself to the removal of such objections as are thought to operate against it. These I shall attempt to exhibit in their full force, without the omission of any thing material, and fairly to obviate by indisputable facts and solid arguments. As the cause is highly interesting and important, I flatter myself, the public will give me an attentive and candid hearing.

OBJECTION I.

Settle-
ment with
the Dutch
1650.

IN 1650 the *English* came to a settlement of boundaries with the *Dutch* and agreed, That "the bounds upon the main shall begin at the west side of *Greenwich-Bay*, being about four miles from *Stamford*, and so to return a northerly line twenty miles up into the country, and after as it shall be agreed by the

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“ the two governments of the said *Dutch* and *New-Haven*, provided the said line come not within ten miles of *Hudson's river*.” It was also agreed, That this settlement should “ be kept inviolable both by the *English* of the united colonies, and all the *Dutch* nation, until a full and final determination be agreed upon in *Europe* by mutual consent of the two states of *England* and *Holland*.”

Records
of the u-
nited co-
lonies.

IN 1664, it was ordered by his majesty's commissioners, “ That the creek or river called *Momoronock*, which is reputed to be about twelve miles to the east of *West-Chester*, and a line drawn from the east point or side, where the fresh water falls into the salt, at high water mark, north northwest to the line of the *Massachusetts* be the western bounds of the said colony of *Connecticut*. And all plantations lying westward of that creek and line so drawn shall be under his royal highness's government, and all the plantations lying eastward of that creek and line to be under the government of *Connecticut*.” Governor *Wintthrop*, who obtained the *Connecticut* patent, who had been conversant in all the affairs of the colony, and could not be ignorant of the boundaries of it, with the other commissioners from *Connecticut*, did consent to this determination, in this full and express manner, “ We under written on the behalf of the colony of *Connecticut* have assented unto this determination of his majesty's commissioners in relation to the bounds and limits of his royal highness the duke's patent and the patent of *Connecticut*.”

Settle-
ment with
the duke
of York
1664.

NINETEEN years after, a line was settled between the province of *New-York* and *Connecticut*, at about twenty miles distance east of *Hudson's river*, to which the commissioners of *Connecticut* did agree, “ That if it please the king's majesty and his royal highness to accept and confirm these articles they shall be good to all intents forever between his royal highness, his heirs and assigns, and the corporation of *Connecticut* and their successors.” The last of these settlements

LordCam
den's opi-
nion 1761

settlements was approbated by the king in council.

" The settlement so made was *absolute* and *conclusive*

" as to the parties concerned."†

" THE *western boundary* of *Connecticut* was barred
" at the time of the original grant by the *Dutch* set-
" tlement; and the crown were deceived when they
" were prevailed upon to convey a territory, which
" belonged to another state then in amity with the
" crown of *England*. Besides this objection, the set-
" tlement of the *new-boundary* under the king's com-
" mission in 1664, and what is still stronger, the
" new line marked out by *agreement* between this
" province and *New-York*, has now conclusively
" precluded *Connecticut* from advancing one foot
" beyond these limits.

" I am of opinion therefore, that the province of
" *Connecticut* has no right to resume their ancient
" boundary, by over leaping the province of *New-*
" *York*; or to encroach upon the *Pennsylvania* grant,
" which was not made 'till after the *Connecticut*
" *boundary* had been reduced by *new confines*, which
" restored the lands beyond those settlements to the
" crown, and laid them open to a new grant."

THIS, I apprehend, to be a fair and compleat stat-
ing of this objection, and I will concede, that the set-
tlement was *absolute* and *conclusive*, as it respected the
parties, according to the natural and genuine con-
struction of the terms, in which the commissioners of
Connecticut subscribed it.

ANSWER.

IN replying to this objection it is necessary to look
back a little into antiquity, and take a view of the
introduction of the *Dutch* and *Sweeds* into *America*,
who began the settlement of the lands included in the
duke of *York*'s patent to the westward; and of the
state of the country when the several patents from the
crown were granted, and when the several settlements
of boundaries mentioned above, were made.

† Dr. Smith. p. 47.

As

As early as fourteen hundred and ninety six and ninety seven the *Cabots* discovered all the north east part of *North-America*, from the frozen straits of *Davis* to *Cape-Florida*. They took possession of the country, erected crosses along the coasts, as the manner then was, procured attournment and acknowledgement from the *Indian* kings to his majesty *Henry VII.* of *England* *.

Cabots
discover
North-
America
1496.

HENRY HUDSON in 1609 made a discovery of *Hudson's river* †; and made a chart of the *American* coast. The *Dutch* pretended that they purchased it of him, and upon that set up a claim to *Hudson's river*.

Hudson
discovers
the river
which
bears his
name 1609

In 1614 they obtained a patent from the States General for trade in *New-England*, and began a settlement on the island of *Manhattans*, since called *New-York*.

Dutch
settle in
America

CAPTAIN Argol governor of *Virginia* made them a visit soon after their settlement, and obliged them to submit to him, and to hold their colony under the crown of *England*. In this state they seem to have continued until about the year 1623 ‡. The *Dutch* colony therefore, in 1620, when the great *New-England* patent was made out, seems to have been in fact under the government of *England*. Soon after this they began to build forts on *Hudson's river*, and one at *Delaware*, and to take possession of the country.

In 1627 the *Sweeds* and *Fins*, encouraged by *Gustavus*, came into *America* and settled on *Delaware river*, near *Cape Hinlopen*. In 1631 they erected a fort on the west side of it, which they called *Christeen*, and another further up the river which they named *Tenecum*. They joined with the *Dutch* in making encroachments on the *English* rights and subjects.

Sweeds &
Fins in
America.

KING CHARLES I. by his ambassadors at the *Hague* made such spirited remonstrances against the conduct of the *Dutch*, that the States General disavowed their having ever given them a commission for what they had

* *Smith's history of New-Jersey* p. 6, 7. *Prince* p. 80.

† *Prince* part I. p. 28. and *Smith* p. 19.

‡ *Smith's history of New-Jersey* p. 19, 20. and *Smith's history of New-York*, p. 2.

Smith's
history of
New-Jer-
sey p. 21.

had done. And afterwards upon king *Charles's* granting a commission to Sir *George Calvert*, afterwards lord *Baltimore*, to possess and plant *Maryland*, about the year 1632, the *Dutch* were so alarmed, that they offered to leave the country for £. 2500, the charge which they had been at in making settlements in *America*. King *Charles* soon fell into difficulties, and becoming unable to support his colonies, the *Dutch* receded from their proposals, rallied and stirred up the natives against the *English* and meditated their destruction.

Records
of the u-
nited co-
lonies.

A number of adventurers from *New-Haven* in 1640 purchased large tracts of land on both sides of *Delaware river* and bay, and began settlements and erected houses for trade. In 1642, the *Dutch*, without shewing any title to the place or lands, burnt down their trading house, seized all their goods, and carried away their men prisoners. They encroached upon the *English* settlements not only on the main land, but on *Long-Island*, protested against their settlements, threatened to drive them off by force of arms, &c. They almost ruined the *New-Haven* planters at *Delaware*, who computed their damages at £. 1000.

BESIDES, the *Dutch* seized their vessels, imprisoned their men, and committed many outrages against the *English*. This made it necessary, if possible, to come to some terms of agreement with the *Dutch*. They were not able to drive them out of the country, and they received no aid from the parent state. In 1650 all these matters were referred to arbitrators mutually chosen by the *Dutch* governor and the commissioners of *Connecticut* and *New-Haven*.

AFTER a full hearing of the case, the arbitrators determined with regard to the boundaries between the *Dutch* and the united colonies as related above. With reference to *Long-Island* they determined, "That a line
" run from the westernmost part of *Oyster-Bay* and so
" in a strait and direct line, to the sea shall be the
" bounds betwixt the *English* and *Dutch* there; the
" easterly part to belong to the *English* and the west-
" termolt-

“termoſt part to the Dutch.” With regard to the lands on the river they determined, “That the Dutch shall hold and enjoy all the lands in Hartford that they are actually poſſeſſed of, known and ſet out by certain marks and bounds, and all the remainder of ſaid lands on both ſides of *Connecticut* river to be and remain to the *Engliſh* there.”

As to *Delaware* they declared, that the *Dutch* governor was “not provided to make any ſuch proof as in ſuch treaty might be expected, and that they were neceſſitated to leave both parties, *in Statu quo prius*, to plead and improve their juſt intereſts, at *Delaware*, for planting or trading, as they ſhall ſee cauſe, only we deſire that all proceedings there, as in other places, may be carried on in love and peace, ’till the right may be further conſidered and juſtly iſſued, either in *Europe*, or here, by the two ſtates of *England* and *Holland*.”

FROM this view of the caſe it appears, that the Dutch ſettlement was a uſurpation, that the ſettlement between them and the united colonies was a matter of neceſſity, in order to maintain peace, to prevent rapine and bloodſhed, that no particular attention was paid to any patent limits, but that the great thing aimed at was to quiet each other in their reſpective ſettlements, and that it was only a temporary thing for preſent convenience ’till a final ſettlement of theſe matters ſhould be made, by the court of *England* and the States General. It was never ratified by the Britiſh court, and therefore conſidering all theſe circumſtances, it can by no means be conſidered as a ſettlement of patent boundaries, or on any fair and legal footing be pleadable againſt the title of *Connecticut* to the weſtern lands.

THE *Dutch* had not at that time, nor had they ever before or afterwards any ſettlements there, or any right to them. They could not therefore be excepted out of the grant in 1620 by the proviſo therein, as they were not in the poſſeſſion of any chriſtian prince. They could not be given away in a temporary

rary settlement, made only by the *award* of *common arbitrators*, without any commission from the king.

I presume it is not in the power of any colony on the continent to give up his majesty's territories for a thousand miles in length, to another prince or state, or to make any final settlement of boundaries with foreign nations. Nay it is not in the power of commissioners appointed by his majesty in council, ordinarily, if ever, to make a final settlement of affairs of this importance, the final appeal is to his majesty in council, and the royal determination is the only final issue.

BESIDES, the final settlement, in the very award is, in the present case, referred to the two states of *England* and *Holland*.

THE lands could not moreover be resigned to the crown by this settlement, as his majesty was no party in the affair, nor had any knowledge of it*.

ALL arguments and objections therefore from this quarter against the *Connecticut* title must be wholly *futile* and *inconclusive*.

CONNECTICUT was not barred at the time of the original grant, nor was the crown deceived, or prevailed upon to convey a territory which belonged to another state. The lands in controversy, as hath been shewed, never did belong to another state. The *Dutch* never laid any claim to them, so far as I can find upon the most careful examination of the matter, either by patent or purchase, and they certainly never had any possession of them.

WITH regard to every part of the country possessed by any christian prince, within the limits of the *New-England* patent, it is expressly excepted out of the grant; so that in this there is nothing conveyed which belonged to another state. The derivative grants must necessarily be understood in the same sense; for they

* This agreement was in the administration of the long parliament, after the execution of king *Charles I.* and before the commencement of the protectorship of *Oliver Cromwell*. There may therefore, probably, a doubt arise here, whether there was a crown to resign it to?

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they could not convey more than was conveyed in the primitive grant. But in the *Connecticut* charter the exception is as clearly and as fully made, in effect, though not in the same express terms, as in the original patent, in sixteen hundred and twenty.

His majesty in his letters patent to *Connecticut* has conveyed nothing, but that part of *New-England* described in them, within his dominions. The words of the grant are, "All that part of our dominions in *New-England in America*," &c. Whatsoever part of this territory was a part of the *British* dominion at that time was granted, and all the rest is by the words of said grant excepted. Nothing therefore, most certainly, could be conveyed which belonged to any other state than in amity with the crown of *England*.

It clearly appears therefore that the noble lord *Camden* is entirely mistaken, even in matter of fact. No less mistaken is *Dr. Smith* when he saith, "It is not true that there is any exception of the *Dutch* country out of the charter, either, expressed or implied." Page 96.

With regard to the settlement of boundaries with the duke of *York*, it will appear, when thoroughly examined to have no more effect or influence upon the title of *Connecticut* than the prior settlement with the *Dutch*.

THE agreement in 1650, did by no means quiet the *English* in their just rights and possessions. The *Dutch* governor, at this time, renounced all claim to *New-Haven*, declared that those passages in his letter in which the *Dutch* claim to *New-Haven* had been asserted, were not written by his order, but were inserted by his scribe without his knowledge: He made fair promises and his friends offered to be bond's-men for the fulfilment of them, but neither they nor he were careful to perform them. The *Dutch* claims were again set up, the *New-Haven* people who went farther to plant *Delaware* and improve their interests there with expectations of peace and safety, were threatened with martial opposition, and even with

Records
of the u-
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lonies.

1651.

Records
of the u-
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blood shed. They were perfidiously seized and kept close prisoners at *New-York*, nor could they obtain any release 'till under their hands they engaged to give over their enterprize and return to *New-Haven*. The company were in a manner ruined, and the colony of *New-Haven* greatly impoverished by this unneighbourly conduct of the *Dutch*.

Records
of the u-
nited co-
lonies
1653.

NOR was this all, it soon appeared that they had entered into a horrid plot with the *Indians* to exterpate the *English*, and to take possession of the whole country.

Records
of the u-
nited co-
lonies
1653.

THE commissioners of the united colonies declared war against them, but the general court of the *Massachusetts* refusing, contrary to the articles of confederation, to join with the other colonies in an expedition against them, they were obliged to give it up. *Connecticut* and *New-Haven* determined to make application to the protector, *Oliver Cromwell*, for ships and men to reduce the *Dutch* to the government of *England*. Letters were accordingly written to his highness, and agents sent from *New-Haven* to solicit the favor. *Cromwell* ordered three or four ships, with a small number of troops, for the reduction of the *Dutch*. They had a long passage, and before they were ready for action the news of peace between the *Dutch* and *English* arrived, and prevented their proceeding.

Hutchin-
son, Vol.
I. p. 182.
and 183.

THE wrongs and damages which the *English* colonies had suffered were never redressed: they were obliged to bear them with patience, and even to suffer new injuries and insults. The *Dutch* being strengthened with fresh supplies of men and ammunition, extended their settlements and encroached more and more upon the *New-England* colonies, as well as upon *Maryland*.

Smith's
history of
N. York,
P. 9.

DISPUTES ran so high between the *English* and *Dutch* on *Long-Island* that they were on the point of open violence and blood shed.

Records
of the u-
nited co-
lonies.

IN 1655, the *Dutch* governor *Stuyvesant* conducted an expedition against the *Sweeds*, on *Delaware*, and reduced fort *Cesimir*, since called *New-Castle*; and

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another fort called *Christeen*. The *Sweeds* were obliged to swear allegiance to the States General ; the *Dutch* became masters of that part of the country, and the *English* were obliged either to leave their possessions, at *Delaware*, or to submit to the *Dutch* government. It seems they almost universally abandoned them to the *Dutch*.

Thus were matters circumstanced when king *Charles II.* granted his commission to colonel *Nicolls*, Sir *Robert Carr*, &c. his commissioners to make a settlement of boundaries between the several colonies in *New-England*, to whom his majesty had granted, or renewed charter privileges. The commission appears most evidently to respect his majesty's colonies of *Massachusetts-Bay*, *Connecticut New-Plimouth*, *Rhode-Island*, and *Providence* plantations ; and properly to have no reference to *New-York*, which, at that time, was not under his majesty's government. His majesty represents the commission as being granted on the complaint of his colonies in *New-England*, "That
 " all his good subjects residing there, and being planters, within the several colonies did not enjoy the
 " liberties and privileges granted unto them, by his
 " several charters ; upon confidence and assurance
 " of which," he says, " they transported themselves
 " into those parts." From this declaration it appeareth, as well as from the whole tenor of the commission, that the whole design of it was to quiet the several colonies therein named, in the possession of all the lands and privileges granted in their several charters. As it respected *Connecticut*, it seemed to have reference to the settlement of boundaries between that colony and *Rhode-Island*, in the *Narraganset* country, with regard to which the two colonies were in a controversy.

This controversy arose early between the two colonies and his majesty, it seems declared to governor *Wintbrop*, before he left *England*, that he would send commissioners of ability to terminate the dispute. To this, no doubt, his majesty refers in his letter, where he

he says, " Having according to the resolution we declared to Mr. *John Wintbrop* at the time when we renewed your charter, now sent these persons of known abilities," &c. and not to any settlement of boundaries between *Connecticut* and the *Dutch*.

Letter to
Connecti-
cut April
23, 1664.

IN the same letter his majesty saith, " We need not tell you how careful we are of your liberties and privileges, whether ecclesiastical or civil, which we will not suffer to be violated in the least degree : and that they may not be is the principal business of our said commissioners ; as likewise to take care that the bounds and jurisdictions of our colonies there may be clearly agreed upon, that every one may enjoy what of right belongeth unto them without strife or contention."

FROM this view of the state of the country when his majesty granted his royal commission to colonel *Nicolls*, &c. and from a view of the commission itself and of his majesty's gracious letter to the colony, brought over by the commissioners, it is very manifest that it had no special reference to the settlement of the western limits of the colony, between *Connecticut* and the duke of *York*. The duke, at this time was not possessed of that country nor was it known that he ever would be. It was not one of his majesty's colonies, nor could he give any absolute assurance that the boundaries should be settled between that and *Connecticut* ; and there is not the least foundation or even colour for the supposition, that the uncertainty of the western boundary of *Connecticut* specified in the charter gave rise to it, or was ever so much as thought of, either by the king or his ministry.

FURTHER it is most manifest from the commission, and from his majesty's letter to the colony, that the cutting short of the limits of it could not be designed by his majesty, but must have been diametrically opposite to his royal will, and in his opinion unjust. Especially, as he saith, that it was, upon confidence and assurance of enjoying the liberties and privileges granted in their several charters that they transported themselves

themselves into these parts. With regard to the *Connecticut* adventurers it must have been great injustice, and even cruelty : for they had wholly at their own expence and charge, purchased the whole of the lands comprised within the limits of their patent, east of the *Dutch* settlements ; at great charge made settlements, saved the country for his majesty out of the hands of the *Dutch*, and at great hazard defended it against them, as well as other enemies, and entirely, through their means, prevented it's becoming a province of the States General. They began settlements in the *American* wilderness, and performed these noble services for his majesty, as they thought under the best security, that they should enjoy all that part of his majesty's dominion in *New-England* lying west of *Narraganset-Bay* to the south sea, as described in the deed to lord *Say* and *Seal*, &c. whose *assignees* they truly were.

BESIDES, his majesty, but two years before the date of this commission, had for the good services which the colony of *Connecticut* had done confirmed said territory to them under the broad seal, bounding them west on the south sea, which he well knew to be at a great distance, to the westward of the *Dutch* settlements. In this renewal of his majesty's letters patent to the colony it is declared, that they shall be effectual and valid in law to all intents and purposes. It must therefore have been an *entire violation* of the *royal word* given in the charter, *absolutely* incompatible with the *royal will* amply declared in his majesty's commission and letter to have made any such settlement as should have barred the title of *Connecticut* to the western lands, and therefore it cannot be supposed that any such settlement was designed.

FURTHER, it is evident from a view of the settlements themselves, as related above, that no such thing was ever designed or thought of.

IN all these settlements of boundaries the parties are expressly mentioned and the settlements are described and ascertained in the most definite terms, as
being

being only between the corporation of *Connecticut* and the *Dutch* settlements, and between his royal highness, the duke of *York*, his heirs and assigns and the colony of *Connecticut*. Were we therefore to consider this as an actual and absolute surrender and resignation, on the part of the colony of *Connecticut* of all the lands specified in said settlements belonging to the duke of *York*, or comprised within the utmost limits of his patent, to the westward of the dividing line, it could, by no means, effect the title of the colony to the lands in dispute, which lie all to the westward of the river *Delaware*; which is the extreme western boundary of the duke's patent. It is most clear and evident that a settlement of boundaries with the duke, could not be considered as a surrender of lands, to which the duke had no claim, nor even a pretence of right or claim. Neither could it be then, nor can it now be viewed, as a surrender of right or title to the king, or any other person, for this obvious and irrefragable reason, That neither the king or any other person or persons were parties in these settlements with *Connecticut*, the *Dutch* and the duke of *York* excepted. Indeed all other parties, persons, and patents, are, by the very terms in which the commissioners of *Connecticut* subscribed, in fact, excluded from said settlements. Therefore these settlements cannot with any colour of reason, law, or justice, be pleadable against the *Connecticut* claim. To strip this objection as naked as possible, and present it to the public in its native features, I will suppose A has an ample deed, well executed, to a farm three miles in length and one fourth of a mile in breadth, lying in length due east and west; D, by some, proviso, in A's deed, or by virtue of prior possession, makes out a claim to a tract of forty rods wide across A's farm at the distance of a mile from the east end of it. They come to a settlement of lines and boundaries between them, at the distance of a mile from said east end, and agree that this shall be an *absolute* and *final* settlement, as it respects their two deeds and claims. Would it not be

be ridiculous to plead that A, by this settlement had vacated and given up all his right and title to the west end of his farm : And that Z, a third person, who was not so much as mentioned in the settlement or had any concern in it, by said settlement, became vested with the title of A to all the west end of the farm ? Is there an attorney in this colony, who would not blush to enter a plea, in any court of law, so egregiously stupid and ridiculous as this ? Yet, in truth, this is the plea made in the objection before us. The proviso, which hath been mentioned in the original patent, to the *Plimouth* company, in 1620, excepted all such lands out of the patent, as were in the actual possession of any christian prince or state : The *Dutch* therefore having actual possession of lands at *New Netherlands*, they could not pass or be conveyed to the company, and consequently the title could not pass from them to others, in any subsequent grants. They could not convey a title with which they were never vested. On this footing the settlements with the *Dutch* and the duke of *York* became necessary : And though *Connecticut* have granted and surrendered up to the duke that tract, which is comprised in his deed, west of the line of division, yet they have by no means precluded themselves, from their right to the west end of their farm ; but it remains good and valid in law, to all intents, constructions, and purposes whatsoever.

BESIDE, it should be observed, that these settlements did not respect the fee or title of the lands, but only jurisdiction. It appears from the very words in which the commissioners subscribed the agreement, that jurisdiction was the thing intended, and that only ; say they, " All plantations lying westward of that creek and line to be under the duke's government, " and all plantations lying eastward of that creek and " line to be under the government of *Connecticut*." Nothing is mentioned concerning the fee or property of the lands.

THE manner in which our worthy predecessors subscribed these agreements, does them great honor, demon-

demonstrates their entire understanding of their own affairs, and their regard to posterity. The Dr. indeed has made a *serious* question of it, Whether governor *Wintbrop* and the other commissioners would have subscribed in the manner they did, had they thought that their grand children a hundred years after, would claim, by virtue of their charter, an immense country west of *New-York*? * He prescribes this as the form most proper to have been used in such a case; "We consent to the above lines or limits, so far as they concern the duke's petent, saving to ourselves our charter rights to the westward." On this I would observe that such a subscription of articles would have been impertinent and ridiculous, inasmuch as the duke had no claim to the westward of his patent limits, nor pretended any infringement of the charter rights of *Connecticut* in those parts. They were too well acquainted with law and compacts, to be ignorant of this, that covenants could bind none, but the parties covenanting, and that they could not be construed to mean any thing more than what was fairly expressed or implied in them.

ON the whole, is it not demonstrably evident, that these settlements have not, by any means, restored the western lands beyond the province of *New-York*, to the crown, nor laid them open to any new grant? Is it not certain that they could have no effect upon the claim of *Connecticut* to lands west of the river *Delaware*, of which the duke of *York* had no patent, and to which, neither before or since, he ever set up a claim, or even pretended to have any title? Especially, since *Connecticut* and the duke of *York* were the only parties concerned or ever mentioned in these settlements.

I shall conclude my reply to this objection with the opinion of the state lawyers on the point, which they gave upon a compleat view of all the settlements between *Connecticut* and the province of *New-York*: It is full, express and determinate. "The agreement
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“ between the colony of *Connecticut* and the province
 “ of *New-York* can extend no further than to settle
 “ the boundaries between the respective parties, and
 “ has no effect upon the other claims that either of
 “ them had in other parts.”

OBJECTION II.

It appears from the state of the colony; when the charter was granted, compared with the words of it, and with the petition to his majesty for patent privileges, that it was never designed to extend the patent boundaries of *Connecticut*, westward, far beyond *Connecticut* river. The purchase of Mr. *Fenwick* was only of the lands in *Say-Brook* jurisdiction, extending about twelve miles on the river. “ That the extent
 “ of this tract could not be far on each side of the
 “ river is certain. *New-Haven* bounds would not
 “ have permitted them to go far westward of the ri-
 “ ver, and the deed or writing of Mr. *Finwick*, shews
 “ that he could not convey to them any lands far
 “ eastward of it* ;” to be sure not further than the boundaries between the *English* and *Dutch* settlements. The *Dutch* claim extended to all that part of the colony east of *Connecticut* river. *New-Haven* colony was about the centre of the *Connecticut* patent, and in the very heart of that colony, as they themselves expressly say, in one of their letters to the colony of *New-Haven*. This shews, at least, that they had no idea of the extension of their colony beyond the *Dutch* settlements. Beside it is plain that the charter was not designed to include the colony of *New-Haven*, and much less could it include a vast territory beyond the province of *New-York*. The colony of *Connecticut*, moreover, in their letters speak of the settlement, between them and the duke of *York* relative to patent bounds as being a good issue of that matter, which it could not be, if the design of the patent was, agreeable to the letter of it, to convey territory to the south seas.

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ANSWER.

* Dr. Smith, p. 17.

ANSWER.

THE objection so far as it relateth to the state of the colony, when it was vested with powers of government, by royal charter, is answered, in a great measure, by the historical account of the first settlements already given, and of the state of the colony when the charter was obtained. By this it appears that the colony of *Connecticut* had made an actual purchase of all the lands in it, on the east of the *Dutch* settlements, of the original proprietors of the country, and had a right to them by purchase, conquest and possession. They had made settlements in all parts of the colony: Had extended them as far to the westward as *Stratford*, *Fairfield* and *Norwalk*, which were great and flourishing towns when the charter was obtained, exceeded by few in the grand list. Civil courts had been appointed there for near twenty years. Jurisdiction had also been extended to all other parts of the colony eight or ten years before his majesty's letters patent were renewed, and the patent of lord *Say* and *Seal*, &c. had been pleaded by the colony, in all matters of dispute, relative to boundaries. This sheweth that they acted as the associates and assigns of lord *Say* and *Seal*, lord *Brook*, &c. and considered the title to all the lands comprised within the limits of their patent as their own. This is further evident from the petition to the king already noticed; from the plea of *Connecticut* against duke *Hamilton's* claim, in 1665; from the declaration of the governor and council on the same subject in 1683: from Mr. *Saffin's* answer to the duke's claim, and from the opinion of council learned in the law, on the subject. That it was the design of his majesty to confirm to the colony of *Connecticut* the grant previously made to the earl of *Warwick*, is evident from the words of the charter, which is predicated on the petition to his majesty, and refers to the purchases therein represented; and his majesty's letter to the colony, in which he calls his letters patent granted to *Connecticut* in 1662, a renewing of the charter, further evinces this point.

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It is yet still further evident from the letter of lord Say and Seal, to Mr. *Wintbrop*, when in *London*, soliciting the patent, saith he, ' I received your letter, and I would have been glad to have had an opportunity of being at *London* myself, to have done you and my good friends in *New-England*, the best service I could; but my weakness, &c.---I have wrote to the earl of *Manchester*, lord chamberlain of his majesty's houshold, to give you the best assistance he may, &c.---I have written to my lord chamberlain, that when you shall attend him, (which I think will be best for you to do, and therefore I have inclosed a letter to him in yours) that you may deliver it, and I have desired him to acquaint you where you may speak with Mr. *Jesup*, who, *when he had the patent*, was our clerk, and he, I believe, is able to inform you best about it, and I have desired my lord to wish him so to do." It is most evident from this letter that it was the design and desire of lord Say and Seal, that his patent should be confirmed to *Connecticut*, and that he was glad to do all in his power to effect it, and wrote to the lord chamberlain to give countenance to the business.

FROM this view of facts the whole objection, which respecteth the state of the colony when the charter was granted at once entirely vanisheth: and so far as it hath reference to these words in the charter, "The same colony or the greatest part thereof was purchased and obtained for great and valuable considerations," it appears to be equally groundless: for it is true in fact that the greatest part of the territory by far comprehended within the limits of the charter was thus purchased. And as to the other words, which are sometimes made an objection to so extensive a claim as is asserted by *Connecticut*, viz. "And some other part thereof gained by conquest, and with much difficulty, and at the only endeavours, expence and charges of themselves and their associates, and those under whom they claim subdued and improved" they appear to be strictly true.

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Some part the planters had indeed subdued, and that at their own expence, and by their own labour and industry, and this is all that is affirmed.

THE objection relative to the purchase made of Mr. *Fenwick* of the fort at *Say-Brook*, and of the right of their lordships is entirely obviated by the state of facts already given. It clearly appears that the purchasers as well as their lordships viewed the purchase as being sufficient to extend the title of *Connecticut* to all the lands within the limits described in the deed to lord *Say* and *Seal*, &c. Both parties appear evidently to have acted upon this principle afterwards in all their conduct ; and this gives sufficient evidence that this was indeed the understanding which they had of the matter. The conduct of *Connecticut* in purchasing the native right to all the lands in the colony, making settlements and granting large tracts of land in all parts of it, and in extending jurisdiction to every part of the colony is unaccountable upon any other supposition.

The conduct of lord *Say* and *Seal* in writing to the lord chamberlain to assist governor *Winthrop* in looking up the old patent, and in obtaining a grant of the lands comprised in it giveth the clearest evidence that his lordship understood the matter in this light. The part which lord *Hide* acted in the affair is a further evidence of it. He had before this time joined with lord *Say* and *Seal* in assisting the *Connecticut* planters and in maintaining their just rights and privileges. This lord *Say* certifies in his letter to governor *Winthrop* ; " I have" says he, " wrote to the earl of *Manchester*, lord chamberlain of his majesty's household " to give you the best assistance he may ; and indeed " he is a noble and worthy lord and one that loves " those that are godly. And he and I did join together, that our godly friends of *New-England* " might enjoy their just rights and liberties." He must therefore have been well acquainted with the affairs of *Connecticut*, and had not the colonists been considered as having a just right to the lands granted by

by the patent to the earl of *Warwick*, and consigned to lord *Say* and *Seal*, lord *Brook*, &c. it is presumed that he never would have assisted them in obtaining a charter in every respect commensurate with said ancient patent.

The petition to the king for the grant of charter privileges, the charter itself, the acquiescence of the original patentees, and of their heirs, from that time to this, give demonstrative evidence of it ; and that the first planters of *Connecticut* were, to all intents and purposes, considered as the assignees of the original patentees, lord *Say* and *Seal*, lord *Brook*, &c.

With regard to the *Dutch* claim to *Connecticut*, it appeareth to have no foundation. The *Dutch* might as well have claimed all *New-England* and the most of *North-America* as *Connecticut*. All the lands on the river, of which they had made any purchase, or to which they could shew any right or title, consisted only of a small tract of about twenty acres, round the *Dutch* house, at *Hartford*. Of this they were dispossessed before the charter was granted.

FURTHERMORE, it is clearly evident from the facts related above, that it was designed to extend the patent boundaries of *Connecticut* beyond *New-Haven*. It cannot be supposed that governor *Winthrop* would have left out of it, such considerable towns as *Stratford*, *Fairfield* and *Norwalk*. Especially, when it was the express design of the charter to confirm to the colony such places as had been purchased and subdued at their own charges and expence. Dr. *Smith* allows that the *Connecticut* petitioners desired to cover the lands which lay within their own bounds †. They then certainly desired to cover the towns mentioned above, with *Farmington*, which was a great and flourishing town. *Stamford* had also been purchased by the people of *Connecticut* * and settled by them. The
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† Page 55.

* July 1st, 1640, Captain *Nathaniel Turner*, as agent for *Quillipiack*, purchased the most of the lands at *Rippowams*, for 12 coats, 12 hoes, 12 hatchets, 12 glasses, 12 knives, two
kettles

fee of the land was wholly in the *Connecticut* planters, although, by the consent of *Connecticut*, the town was taken under the jurisdiction of *New-Haven*. Agreeably therefore to the prayer to his majesty, to the words of the charter, and to the Dr's concession, it was designed most certainly to include these plantations to the westward of *Connecticut* river, as well as those upon it, in the charter.

FURTHERMORE the patent to the earl of *Warwick* included all the country on the sea coast from *Narraganset* river to the *Dutch* settlements, agreeably to the location which Dr. *Smith* has made of the territory granted in that patent : and this grant was most evidently confirmed by the charter. Therefore the limits of *Connecticut* were, on this principle, extended to the westward beyond any town or plantation under the jurisdiction of *New-Haven*. Yes, they were extended, on this principle not only as far westward as the *Dutch* settlements, but as far as the south sea. This we have clearly shewn to be the western boundary of the territory described in the deed to the earl of *Warwick*.

FURTHER the charter very evidently comprises within the exprefs boundaries of all the country lying on the sea coast west of *Narraganset-Bay* to the *Dutch* plantation. We do, says his majesty, "Give, grant" and confirm unto the said governor and company, "and their successors, all that part of our dominions in *New-England* in *America*, bounden on the east" by *Narraganset* river commonly called *Narraganset-Bay*, where it falleth into the sea : and on the north "by the *Massachusetts* plantation, and on the south by "the sea." All that part of *New-England* west of *Narraganset* river, which was, at that time, within the dominions of the king of *England*, bounded south by the

kettles and four fathom of white wampum. The *New-Haven* planters made no settlement there, but on the 30th of the following October, sold it for £. 30 - 10, to *Andrew Ward* and *Robert Coe* of *Wethersfield*, who acted in the behalf of a considerable number of the people of that town. The next year they began to make settlements on the lands they had purchased.

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the sea, was therefore expressly granted by the charter, and it was to extend westward, as hath been shewn to the south sea, the whole breadth between the south line of the *Massachusetts* and the sea, where it ceaseth to be a southern boundary to his majesty's dominions, in *New-England*, west of *Narraganset* river. No boundary can be more notorious and express than this southern boundary. Dr. *Smith* nevertheless ventures to affirm, That the charter is "totally silent as to any extent on the shore": And he says further, "Mr. *Wintrop* left the charter open towards *New-Haven*, with a view to have it's limits settled, more or less westward as the king's commissioners might think fit, and *New-Haven* agree." But are not these most groundless assertions, such as the truth of facts will never warrant? Where was the opening which the Dr. affirms? Let him shew it to us if he can. Let him shew us what part of *New-England*, in his majesty's dominions in *America*, west of *Narraganset* river, is not bounded south on the sea. Let him tell us by what authority he affirms, that Mr. *Wintrop* left it open, with a view to have it's limits settled, when he expressly petitioned to have the grant to lord *Say* and *Seal* confirmed to the petitioners. Did he pray for one thing and mean another? Did not governor *Wintrop* with others, in a plea made but three years after, declare that said grant or deed was confirmed to them by his majesty's charter? Has it not been shewn by substantial vouchers that this was in fact the case? This grant conveyed territory one hundred and twenty miles on the sea coast, just about to the place where the line was fixed between *New-York* and *Connecticut*, by his majesty's commissioners, as the Dr. insisteth, and left no opening between *Narraganset* river and the *Dutch* plantations. He must therefore have been entirely mistaken in these representations. The charter was not silent either as to a southern or western boundary, they are both expressly fixed.

His majesty's commissioners in their determination

Page 28.

Page 55.

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in 1664, declare that the sea was the southern boundary of *Connecticut* as expressed in their patent. Their words are these, "We do declare and order, that the southern bounds of his majesty's colony of *Connecticut* is the sea, and that *Long-Island* * is to be under the government of his royal highness the duke of *York*, as is expressed by plain words in the said patents respectively." From all these facts it appeareth that all the Dr. hath said with regard to the southern boundary of *Connecticut* is a mistake, at least, to say nothing worse of it.

It is also abundantly manifest that the limits of the colony extended westward beyond any of the *New-Haven* settlements.

This may be further argued from the understanding which *Connecticut* had of the patent, and which his majesty's commissioners appear to have had also. Immediately after *Connecticut* received their charter, which was in October 1662, the general assembly sent to the town of *West-Chester*, sometimes called *Winchester*, declaring, That they were comprehended within the bounds of the charter, and desiring them, since it had been his majesty's pleasure thus to dispose of them, to conform to his royal will. The colony the same year exercised jurisdiction at *Greenwich*, and after-

Records
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necticut.

* By a particular clause in the patent of the duke of *York*, all that island or islands, commonly called by the several name or names of *Mettowacks* or *Long-Island*, was granted to the duke, and to this the commissioners have reference, in the determination above. This island a considerable part of it, had been purchased and settled by *Connecticut* and *New-Haven*; many years before; and soon after the charter was granted, the General Assembly of *Connecticut*, asserted their claim to it as one of the adjoining islands expressed in the charter; and extended jurisdiction to *Huntington*, *Setauket*, *Oyster Bay* South *hoid*, *South-Hampton*, *East Hampton*, *Hempstead*, *Jamaica*, *New Town*, *Flusker* and *Graves-Inn*. (Records of *Connecticut*.) The determination of the commissioners bore hard upon *Connecticut*, but the duke of *York* was too powerful an antagonist for a poor colony to contend with, and they were obliged to submit to it.—To make the affair as easy as might be, governor *Winthrop* was allowed to possess ten or twelve thousand acres on *Long-Island*, and to have the whole of *Fisher's-Island*,

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afterwards the town of *Rye* was settled under their jurisdiction. These facts abundantly demonstrate that their patent was understood by all, even by the *Dutch*, and by his majesty's commissioners, who fixed the boundaries between this colony and *New-York*, at *Momoronock*, to extend beyond *New-Haven*, and all the towns in that jurisdiction. Allowing therefore that *New-Haven* colony was not included in the patent, it will not in any respect operate against the title to the lands in dispute: for if the patent extended beyond *New-Haven*, as it most certainly did, and beyond all the towns included in that jurisdiction, then it might extend to the western lands, and to the south seas. It doth not therefore, so much as furnish a plausible plea, against said title, if the fact, for which it is so warmly contended, were most amply conceded.

BUT I must further observe, that nothing is more evident than that *New-Haven* itself, and all the towns in that jurisdiction, were in fact included in it. The location made already of the *Connecticut* patents puts it beyond all dispute. The determination of the commissioners with regard to the southern boundary, which they represent as agreeable to the express words of the charter, sheweth it. They fix no new boundary, but say that the southern boundary is the sea, as is expressed by plain words in the patent.

MR. *Wintbrop's* promises in *London* that the *New-Haven* colonists should not be disquieted or prejudiced in their rights and interests by the patent, clearly shew, that they were to be included in it, and in fact were included. Had they not been included, it would not have been in his power to disquiet and injure them, and there would have been no need of any promise or engagement of this nature with reward to them, more than to all the other colonies then on the continent.

IN a word, the colony of *New-Haven* submitted to *Connecticut*, at last, for this reason, among others, that they might be defended by that colony, against

the king's commissioners, under the covert of their charter, and have all the patent rights and privileges granted to the colony of *Connecticut*, secured to them, and to their posterity. But how could *Connecticut* defend them, and secure to them patent rights and privileges, if they were not evidently included within the limits therein described? How could *New-Haven* expect to receive any advantage from *Connecticut* and their charter, rather than from *New-Plimouth* or *Rhode-Island*, or any other colony, if they were not included within the bounds of it? Can there be any thing more evident therefore, than that they were indeed comprehended within it's known boundaries, and were persuaded of it themselves?

AN explanation of the whole affair relative to *New-Haven*, I apprehend, is not difficult. The truth seems to have been this: The colony of *New-Haven* consisted only of five small towns, on the main land. One of these was disjoined from the other by the intervention of two or three large Plantations. They were not therefore judged large enough for a distinct colony. They had no patent limits, nor had they any waste lands to settle, by which the colony might be enlarged, beyond the limits of these towns. Besides, as these towns did not all lie together, it was less convenient for them to be continued a distinct commonwealth, and made it much more inconvenient for *Connecticut*. The whole of the lands in *New-Haven* colony had been conquered by *Connecticut*, and the towns of *Milford*, (called by the natives *Wopowage*) *Stamford* and *Branford* were purchased and planted by the people of *Connecticut*, as before related. The *New-Haven* adventurers had made no settlements except at *New-Haven* and *Guilford*, of which last town only a part was purchased by the first planters. Both colonies appear to have purchased, and begun settlements under the same original patent of the lord *Say* and *Seal*. Both colonies united in one might, in all respects, enjoy as ample privileges as either of them could possess seperately, and with less expence. For these

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these reasons it was judged to be for the advantage of both colonies to unite them in one by royal charter. But as *New-Haven* had been originally settled as a distinct jurisdiction, and had been owned as such for many years, his majesty and the ministry chose rather to have their union voluntary, than a matter of mere force and necessity. Therefore taking a promise of governor *Wintthrop*, that the rights and interests of *New-Haven* should not be *disquieted* or *prejudiced* by the patent, it was so draughted, on design, as to comprise them within it's express limits. It was not doubted by the friends of *New-Haven* colony, but that when they came well to consider the matter, and should understand the ample immunities and privileges granted in the charter, they would gladly unite with *Connecticut* under one and the same government. This is clearly to be collected from facts. Governor *Wintthrop*, in his letter to the colony, wrote thus, " If both governments would, with unanimous agreement, unite in one, their friends judge it for advantage to both. They do not doubt, but upon future consideration, there may be such a right understanding between both governments, that an union and friendly joining may be established, to the satisfaction of all, which, at my arrival, I shall also endeavour (God willing) to promote." A declaration of the general assembly at *Hartford* October 8th, 1663, will give further light in this matter. " This court declare, that they can do no less for their own indemnity than to manifest our disapprobation of the proceedings of the plantations of *New-Haven, Milford, Branford, &c.* in their distinct standing from us, in point of government, it being directly opposite to the tenor of the charter lately granted to our colony of *Connecticut*, in which charter these plantations are included. We do also expect their submission to our government according to our charter, and his majesty's pleasure therein expressed ; it being a stated conclusion of his majesty's commissioners that jurisdiction right

" always

“ always goeth with patent. And whereas the a-
 “ foresaid people of *New-Haven*, &c. pretend they
 “ have power of government distinct from us, and
 “ have made several complaints of wrongs received
 “ from us, we do hereby declare, that our council
 “ will be ready to attend them, or a committee of
 “ theirs, and if they can rationally make it appear,
 “ that they have such power, and that we have wrong-
 “ ed them according to their complaints, we shall
 “ be ready to attend them with due satisfaction.”

FROM all these facts, taken together, I think no-
 thing is more evident, than that *New-Haven* was in-
 cluded in the patent of *Connecticut*, and that it was done
 upon design. It is also evident that the limits of the
 patent extended beyond the utmost boundaries of the
 old colony of *New-Haven*; and therefore the affair
 of *New-Haven*, cannot with any justice or propriety
 be urged as an objection or plea to invalidate the
 title of *Connecticut* to the western lands.

BESIDES, nothing is more manifest than this, That
 the whole dispute between *New-Haven* and *Connecticut*,
 was not with respect to the fee and property of the
 land, but with regard to powers of government and
 right of jurisdiction only; which further sheweth the
 objection to be entirely groundless and unreasonable.

WITH regard to these passages in the letter from
Connecticut to *New-Haven*, seeing those plantations you
 inhabit are much about the centre of our patent which
 our charter limits: those plantations in the heart of
 our colony, which are objected; it will be necessary
 only to observe, That when these plantations are said
 to be in the heart of the colony, it is with reference
 to the settlements which *Connecticut* had made all
 round them, and to the line settled with the duke of
York, and not with regard to the extreme boundaries
 of their patent to the westward. Nothing could be
 properly called their colony, but the country, or ter-
 ritory which they had planted, and over which they
 had a right of jurisdiction. As they had not there-
 fore purchased or settled any lands at this time west
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of the line of division, between them and the duke of *York*, and as those lands were then, both in the possession, and under the government of their native and independent sovereigns, they could not, in truth or justice, be said to be of the colony of *Connecticut*; although clearly comprehended in the charter; and notwithstanding the colony were vested with the sole right of preemption. These words and clauses therefore do by no means militate against the right of the colony to the lands in dispute. Nay, allowing that the writers of the letter from *Connecticut* were ignorant of the true extent of the charter, and really meant that *New-Haven* plantations were about the centre of the territory conveyed by patent, can this be construed in law or reason as a surrender or forfeiture of their right to the lands most amply granted under the broad seal? Can the most express and ample conveyances be rendered null and void by an accidental stroke or two in a cursory letter? Especially, when these very passages may be fairly construed in a different manner? What can be more futile and ridiculous than a pretence like this?

As to the *good issue* obtained relative to patent boundaries, what hath been already observed in answer to this objection and to the former, respecting the settlement of boundaries with the duke of *York*, is a sufficient reply. It was a settlement which left all their charter rights to the westward, beyond the river *Delaware*, just as it found them; and on this side it secured to them all the lands they had settled, and more. This was a *good issue*, as colonel *Nicolls*, president of the commissioners, was, by the duke appointed governor of his province of *New-York*, and so was, in some sense, judge in his own case. It was a *good issue* with regard to *New-Haven*, as the commissioners had determined that *Connecticut*, agreeably to the express words of the charter, was bounded south on the sea, and so included them under the jurisdiction of *Connecticut*. In all these respects it was a *good issue* with regard to patent boundaries. These probably

bably were the things designed by the *good issue*. As the line settled by his majesty's commissioners, between his royal highness the duke of *York* and *Connecticut*, was west of all lands ever claimed by *New-Haven*, I cannot understand with what propriety the words can be supposed to have any reference to it, or to have any force by way of objection, in the present case. Besides, as the controversy between *Connecticut* and *New-Haven*, was not with regard to the fee of the land, but with regard to jurisdiction, there is no ground of objection from this quarter.

OBJECTION III.

AFTER the union of the two colonies of *Connecticut* and *New-Haven*, " We find them about the year 1680, and before the grant to *William Penn*, answering questions put to them by the BOARD OF TRADE, concerning their bounds, &c.---thus---

" Quest. What are your bounds ?

" Ans. The *reputed* and *known* boundaries are *Masachusetts* on the north, *Rhode-Island* colony on the east, *Long-Island* sound on the south, and *New-York* province on the west.

" Quest. What are your rivers ?

" Ans. Between the *Narraganset* river, our eastern bounds, and *Mamaroneck* rivulet, our western bounds, are these rivers following---the river *Connecticut*, the *Pequot* river, and the river at *Stratford*. Here we see them in an answer to his majesty's ministers expressly limiting their charter bounds north, south, east and west, making no claim or reservation over.

" In their answer to the first question, it may be said, because *New-York* province is mentioned, they meant their western bounds only in respect to that province. But what reasonable man would put that construction upon words delivered in such absolute and explicit terms ? *New-York* province is our bounds on the west. And when they mention their western bounds over again in their an-

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“ fwer to the second question, without any relation
 “ to *New-York*, they give rivers as their bounds, viz.
 “ *Narragansett* river is our eastern bounds, *Mama-*
 “ *roneck* rivulet our western bounds.

“ Further, when they enumerate the rivers with-
 “ in their colony, they mention as all their rivers, on-
 “ ly those falling into the sea and sound between
 “ *Narraganset* and *Mamaroneck*. They surely knew,
 “ in 1680, *Delaware*, *Susquebannab*, the *Allegeny*, and
 “ many of their great branches,” and would they not
 have mentioned these among their rivers, “ had they
 “ then thought that their western bounds were not
 “ absolutely fixed by the limits which they had al-
 “ ready mentioned *”? What can be a clearer de-
 monstration that the colony had not the least concep-
 tion of any title to the western lands than these an-
 swers? On the supposition they once had a title, have
 they not, by such replies, entirely relinquished and
 given it up?

ANSWER.

THERE were no such answers given, in 1680, as the
 Dr. represents. The answer given at that time rela-
 tive to boundaries was very short, and in these words,
 “ Our boundaries are expressed in our charter.” So
 far were the colony from giving up their claim, at this
 time, as the Dr. insinuates, that they assert their char-
 ter limits and boundaries, and refer the honorable
 BOARD OF TRADE and PLANTATIONS to their patent,
 as containing the most complete and satisfactory an-
 swer to their question on that head. This sheweth,
 that the political fathers of *Connecticut* had not, at that
 time, the least apprehension that either the settlement
 with the *Dutch* in 1650, or the more recent settlement
 with the duke of *York*, in 1664, had precluded them
 from advancing beyond the limits then agreed upon
 between the province of *New-York*, and the colony of
Connecticut, or that their boundary had been reduced
 by any new confines, or by a restoration of any thing
 to the crown. They still most evidently insist on
 their charter limits and boundaries. THE

THE answers which the Dr. has been pleased to fix so *very early*, were not given until about the year 1730, in the administration of governor *Talcot*. This was fifty years after the grant made to Sir *William Penn*. The antedating of *these*, a complete half century, was, probably, owing to the Dr's want of acquaintance with the truth of facts. However, this is the only foundation of his specious harangue, relative to *Connecticut's* relinquishing their title to the western lands, previous to the grant made to Sir *William Penn*. Upon this ground it is, that he makes this representation favourable indeed, on the side of the proprietaries, that *Connecticut* had relinquished, and wholly given up their *claim* and *title* to the country west of *New-York*.

THIS representation, is as opposite to the truth as possible, and is particularly *injurious* to *Connecticut*. Gentlemen should be cautious of such mistakes, to be sure, in a matter of such importance, as that depending between *Connecticut* and *Pennsylvania*. The alteration of dates, at this rate, would at once be attended with fatal consequences, in affairs the most weighty and interesting.

FURTHER, it should be observed, that had the Dr. stated the questions as they were proposed to the colony, by the honorable BOARD OF TRADE AND PLANTATIONS, it would have given an entirely different view of the case. They no where enquire what are the limits described in your charter, or what are your patent boundaries? No; *these* they well knew already. They had the charter, in which they were clearly expressed. They enquire, "What is the situation of the *colony* under your government? What are the reputed boundaries? What are your rivers?" The questions therefore are *these*, What are the boundaries of that part of the country which you have planted and govern? What is the situation of it? And what are the rivers within the limits of it?

To these queries the colony answered, in 1730, as represented in the preceeding objection. The same queries, for substance, were sent to the governor and company in the administration of governor *Fitch*, in 1761, and the same answers, in effect, were given.

In this view, *these* are by no means to be considered as answers relative to *patent* limits and boundaries. So far as these answers respected the western boundary of *Connecticut*, nothing more could be designed or implied than that *New-York* province was their western boundary, as it respected that province, and was the western boundary of the plantations under their government, at that time. The Dr. indeed enquires, What reasonable man would put this construction upon words delivered in such *absolute* and *explicit* terms? *New-York* province is our bounds on the *west*. I would enquire, in my turn, What reasonable man, well considering the question to which they are an answer, can put any other construction upon them? Let words be ever so *absolute* and *explicit*, they are *absolute* and *explicit* only with regard to the thing affirmed and answered.

A view of the right conveyed, by patent, to *Connecticut*, and of the state of the western lands at the time of these answers, will furnish a further answer to the objection under consideration.

ALL the right which the king obtains by prior discovery to lands actually possessed and inhabited by the native proprietors is only a right of preemption: this therefore, is all the right which can pass from his majesty, by patent to any corporation, to lands under these circumstances. This was therefore all the right which could ever pass, or be conveyed, by his majesty to the earl of *Warwick*, or to the colony of *Connecticut*, to the western lands, comprehended within the limits of their charter. This being the case the lands and rivers west of the province of *New-York* remained in the possession, and under the government of the natives until they made sale of them to the *Connecticut* colonists, or to some other purchasers,

fers, which they had not done at the time when the answers referred to were given. The colony were not at that time vested with the native right, though they were with the right of preemption. The colony or government of *Connecticut* did not extend to that part of the country at that day, nor were those rivers in their possession; although they had a right before any other government to purchase those lands and rivers, when ever the natives should be disposed to sell them, and to extend jurisdiction thither, when the lands should be so purchased.---These answers therefore, do not at all demonstrate, that the colony had not the same idea of the extension of their charter, and of their title to the western lands, at the time, when they were given, which they now have. There is a clear distinction between the limits of a government or colony, and the limits of a patent. A colony signifies the country planted, and under the government of a particular corporation; but the patent limits of a colony may extend to tracts not planted or under the government of the said colony. This is always the case, when the right of preemption is given to lands in the possession and under the government of native princes, until such times, as conveyances are actually made by the original proprietors to the corporation or government who are vested with the right of preemption. An answer therefore to the question, What are the boundaries of your colony? can by no means, be considered as a declaration of the limits of the charter, nor in reason or justice be looked upon as an objection of any force in the present case.

But even allowing the most which can be urged or even supposed, in the present case, that these were answers with regard to the boundaries of the charter, and were an ample declaration of what was at that time understood to be the limits of it, could even this, in law or justice, be pleadable against an express and well executed grant? Could it be construed as a surrender, of the right and title of the colony to the lands

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lands *expressed within* the limits of their patent ? Should an heir to a certain inheritance commence a suit in law, for a tract of land, and be able to produce an authentic deed of said land, prior by many years, to any other, would it be a sufficient barr to his recovering that inheritance, to prove that his father or grandfather had sometime or other said, that their lands did not extend so far, and were bounded so and so, short of the boundaries expressed in the original deed ? Especially if it could be proved that ten times as often they had given the same account of the bounds of their manor, as expressed in the deed ? I dare appeal to the common sense of mankind, and to all judges of law and equity, whether a plea like this, would not be perfectly trifling and impertinent, and would not reflect dishonor upon the person, who should venture to make it ? Just so trifling and nugatory is the objection before us. The fathers of this colony have, in two or three instances, within a century past, answered as alledged in the objection ; but at all other times have said " Our boundaries are expressed in our charter," or to that effect.

OBJECTION IV.

WHEN the patent of the colony of *Connecticut*, and the other patents, which grant territory to the south sea passed the royal seal, the geography of the country was not known. It was supposed, that the *American* continent was very narrow, and that the western ocean was at no great distance from the *Atlantic*. The south sea was fixed as a western boundary to *New-England*, in the original patent, and to the several subsequent patents, conveying distinct parts of it, entirely through ignorance and mistake. The king was deceived in his grants, when he conveyed lands through immense territories to the western ocean. It is therefore trifling and romantic to plead them, at this day, or even to mention them as being of the least importance or validity.

ANSWER.

ANSWER.

THIS objection is founded principally in mistake. It is true indeed, that the geography of *America* was less known, in those early times, than it is at present. It was, however, matter of *notoriety*, that the *North-American continent* extended some thousands of miles in longitude and breadth. In the close of the fifteenth, and in the beginning of the sixteenth century, the *Cabots* discovered all the eastern coast of *North-America*, from between sixty and seventy degrees of north latitude, to *Cape-Florida*, which is in about twenty five degrees of northern latitude. A map of the whole coast of *North-America* was drawn by *Sebastian Cabot*, and hung up in his majesty's privy gallery in *White-Hall*, as a valuable testimonial of the title of the *British* crown to all *North-America**.

Prince.

As early as the year 1535, *James Cartier* made a discovery of the river *St. Lawrence* nine hundred miles from the mouth of it; and long before the *New-England* patent was granted, the *French* were well acquainted with the country of *Canada*. Some years before that *Champlain* began the settlement of *Quebeck*.

Charles-voix.

In 1542 the *Spaniards* discovered the great river *Mississipi*. *Ferdinand de Soto* with a number of *Spaniards* landing at *Florida* travelled into the country near fourteen hundred miles from the sea. They discovered the river *Mississipi* more than twelve hundred miles from the mouth of it. The *Spaniards* here built a number of brigantines, and sailed down the river, making discoveries. Sir *Walter Raleigh*, lord *De-la-ware*, captain *Smith* and others of the old *Virginia* adventurers had discovered the country, far to the westward, before the grant of the *New-England* patent. Captain *Smith*, who had discovered the country to the

* In memory of this discovery *Sebastian Cabot* made a chart of the whole *American* coast, with his picture and this title, *J. Mag. Seb. Caboti, Filii Jo. Caboti, Venetiani, Militis aurati, &c.* This map contained a concise account of his discovery of *North America*. *Smith*, from *Eutic*; see *Smith's history of New Jersey* p 7.

the westward, while he was president, or governor of *Virginia*, in 1614 discovered the eastern coast of *New-England*, and presented a map of the country to the court of *England*.

In 1580, Sir *Francis Drake* compleated his circumnavigation of the globe. In this voyage he was all along the coast of *Callifornia*, and made a port on the western shore of the *American* continent, not far south of our latitude. Accounts of these voyages, and of many others, in which discoveries of *New-England*, and of *North-America* had been made, were early published in *Europe*. It is therefore, I think, morally impossible, that the king and his ministry should have been ignorant of the extent of the *American* continent, as to longitude and breadth, when the *New-England* patent was granted, or when the subsequent patents received the royal confirmation.

Besides the declaration of the great *Plimouth* company will give still more convincing evidence of this point. Having parcelled out, in various grants, the most, if not the whole, of the territory conveyed in the original patent of *New-England*, they, in 1635, made a final resignation of their patent to the crown. In this they acquaint his majesty, that the extent of the *New-England* territory, from sea to sea, was about three thousand miles. They say " Our grant from east to west, through all the main land, from sea to sea, being near about three thousand miles in length." This gives demonstrative evidence that they had as thorough an acquaintance with the extent of *America*, in the latitude of *New-England*, at that day, as we have at this.

NORTH-AMERICA no where exceeds three thousand miles in breadth, but rather falls short of it. In the latitude of *New-England*, where it has it's greatest extent, in longitude, it is nearly, three thousand miles*.

WE

* " *America* is situate between 80 north, and 58 south latitude, and between 35 and 145 degrees of west longitude, bounded by the lands about the pole on the north; by the *Atlantic ocean*, which seperates it from *Europe* and *Africa* on

" the

WE have therefore clear evidence, that the GREAT PLIMOUTH company knew what they were doing, when they made conveyances of *immense territories*, as some are pleased to call them, to the south sea.

WELL did they understand what they transacted, in 1630, when they granted the patent to the earl of *Warwick*, and his majesty could not be ignorant of the extent of the territory which he confirmed to his lordship, when the patent received the broad seal. Nor can we suppose that his majesty or his ministry were less acquainted with the geography of the country in 1662 when letters patent were granted to *Connecticut*. Numerous voyages had been made to almost every part of *New-England*, and of *North-America*, before this time, and some parts of the country had been settled more than half a century, a large trade had been carried on with the *Natives*, from all parts of the country. They were great travellers ; were well acquainted with all parts of the inland country, and early gave the *English* very accurate accounts of it.

How impertinent and groundless therefore is the insinuation, that the king was *deceived* in his grant? What clearer evidence can we have, that his majesty and the original patentees were not deceived? And that they designed to grant all that they have granted to *Connecticut*, and well knew that they granted all we contend for?

We may therefore, in law and reason, yet challenge and insist on our patent boundaries. It is neither trifling nor romantic.

OBJECTION V.

THE long silence of *Connecticut*, relative to their title, gives clear evidence that they never had any just claim or title to the contested lands, even in their own apprehension. Indeed if *Connecticut* ever had any title

" the east ; by another vast ocean on the south ; and by the
 " *Pacific ocean*, usually called the *South Sea*, which divides it
 " from *Asia* on the west, being 8250 miles long, from north to
 " south, and scarce 3000 miles broad in any place, and in some
 " not 1000 miles broad." SALMON.

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title it is now become extinct, in law, by virtue of such silence for a century or more. It ought to be construed as a *dereliction*, and compleat *forfeiture*. The colony of *Connecticut*, when they came to defend themselves against the right of duke *Hamilton*, before the commissioners of the crown, made the duke's silence as to his right, only for thirty years, one of their chief arguments.

“ SIR *Francis Pemberton*, afterwards, one of the justices of the king's bench gave an opinion in favor of *their long uninterrupted possession*, &c. and they hold the lands to this day. Dr. Smith
P. 69, 70.

“ BUT will they put a thirty years silence in competition with that of a whole century? Nay, more than a century, so far as to any public act of their colony, claiming in virtue of their own charter.”

ANSWER.

THE contested lands, for the greatest part of a century past, were in the possession and under the government of the original *Indian* proprietors. They were entirely unwilling to sell and remove from them. While this was the case there was no occasion for the colony of *Connecticut* to say or do any thing relative to matters of claim or title. No person made any legal challenge of the whole, or of any part of these lands, so far as they had any notice, during the most of this period. Nor does it appear, that even the leading men in the colony were, till lately, apprized of the encroachment of the patent of Sir *William Penn* upon *Connecticut*. They seem to have been entirely ignorant of the extent of the territory granted to him, and to have had no suspicion, that the lands in contest were within the limits of his patent. Governor *Wolcott*, in a letter to governor *Hamilton*, March 13, 1754, says, “ Some of our inhabitants hearing of *this land at Susquehannab*, and that it was north of the grant made to Mr. *Penn*, and *that to Virginia*, are upon a design of making a purchase, &c.---But Mr. *Armstrong* informs me that this land is certainly *within Mr. Penn's grant*.” This affords good

good evidence that *Connecticut* did not, till within a few years, know that the proprietaries had any claim to any part of the territory granted to them by royal charter. There was not, therefore, the least occasion for *Connecticut* to say any thing relative to their claim, and their silence respecting it can be no reasonable ground of objection. A man's silence with regard to his title, while he is not apprized of any competitor, and while no challenge is made, is not pleadable, nor can be, in any case whatsoever.

FURTHER, as soon as the native proprietors were willing to sell the contested lands, and to remove from them, *Connecticut* began to make purchases, and to improve and act upon their title. There can therefore, in the present case, be no weight at all in the objection. Indeed if there be, it may be urged with as great plausibility against the proprietary title, as against that of *Connecticut*.

Report
P. 30.

The reply of the *Connecticut* commissioners, on this point, to governor PENN, is worthy of special notice. They say, "The acquiescence of the colony under the grant of *Pennsylvania*, is of no more force than the acquiescence of the proprietaries under the grant of *Connecticut*, and can have little weight on either side, since 'till very lately the *Indians* refused to give up the country to either, and neither can be considered as having suffered their claim to have lain culpably dormant, under the particular circumstances of the case, and the situation of the country; and especially this cannot be imputed to *Connecticut*, whose grant was expressly for the purpose of settlement, but without limitation of time; and they had not 'till within a very few years past, settled the country to the eastward of *New-York*, and consequently could not, upon any proper grounds, sooner pursue their claim, or attend to the actual settlement of this western part of their colony."

As to the plea of possession, urged by *Connecticut*, against duke *Hamilton's* claim, it was founded on facts

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facts and principles essentially different from any, which the proprietaries can, in truth, plead. *Connecticut* had conquered and made an actual purchase of the very lands which *he* claimed and knew to be included in his patent. Their lordships *Say* and *Brook*, had sent over a governor to take an actual possession of them. Possession had been taken in the most public manner, and their lordships and their associates had expended nine thousand pounds in settlement of the lands claimed by his grace. They had planted many flourishing towns on the lands; yes, a complete colony, and had been owned as one for near thirty years. The proprietaries have done nothing like this upon the lands in controversy. The cases are entirely dissimilar, and therefore there is no reason in urging the former case, as a plea in the present.---What the Dr. hath said, on this head, is rather *specious* than *solid* and *conclusive*.

Smith's
answer.

I HAVE NOW done with the principal objections urged against the claim and title of *Connecticut* to the western lands. Indeed these are the only objections, which, to me, seem to merit any particular notice. However, as there are several other things, which Dr. *Smith* hath urged against them, and as he may think they bear hard upon me, and impute it to a want of candor, should I pass them in silence, I will make some cursory remarks upon them.

HE maketh a great business of the long possession, which the proprietors have had of the contested lands. This he insisteth is near a century at least. But are there any principles on which he can found such a long possession of the disputed territory, which will not operate more forcibly in favor of the claim of *Connecticut*, than of the claim of the proprietaries? The only principle, on which he can found such possession, is this, That a man by taking possession of any part of his farm, or of any granted territory, takes possession of his whole farm, or of the whole territory, be it ever so extensive. Other possession than this he cannot pretend, 'till very lately. But this is a principle,

iple, which will operate entirely to the advantage of *Connecticut*. They took an actual possession of the country granted to them, made a conquest of a considerable part of it, and at great hazard and expence planted several towns more than forty years before the patent of Sir *William Penn* was obtained, and before any settlements were made by the proprietaries. *Connecticut* on this principle, had a legal possession of the whole country granted in their patent prior to any possession, which can be pleaded by *Pennsylvania*.

Report
P. 29.

As to the actual purchase and possession of the western lands, that of *Connecticut*, was as early, as that of the proprietaries, and seems to have preceded it. Our commissioners, in their report, say, "The purchases from the *Indians* by the proprietaries, and sales by them made, were they more ancient than they are, could add no strength to the proprietary title, since the right of preemption of the natives, was, by the royal grant, expressly vested in the colony of *Connecticut*, and consequently those purchases and sales were equally without any legal foundation: they could neither acquire any right by the one, or transfer any title by the other:--- But both the one and the other have been too recent to be the ground of any argument, since we are advised that the proprietaries made no purchase of the natives, of any consequence to this dispute, prior to the treaty at fort *Stanwix*.---The actual occupation, under the *Connecticut* title of the contested lands, was as early, and in some parts of the country, prior to that under the proprietaries." Objections of this kind must therefore be entirely groundless and futile.

THE grant to Sir *Edmund Loeyden* can have no effect on the title of *Connecticut*. I cannot find that ever any settlements were made under said grant either by Sir *Edmund*, or by any under him. Had there been a grant made to him of the contested territory, as the *Dr.* insists, it would now, doubtless, have been extinct

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extinct in law, as all claim and settlement, for more than a century past, hath been entirely neglected.

BESIDES it doth not appear that Sir *Edmund Loeyden* ever had a patent of the lands in controversy. Mr. *Smith* saith, " King *Charles* gave a commission to Sir *George Calvert*, lately made lord *Baltimore*, to possess and plant that part of *America*, now called *Maryland*: and to Sir *Edmund Loeyden*, or *Ployden* to plant the northern parts towards *New-England*." † Agreeably to this account of *Ployden's* grant it was only to extend towards *New-England*, consequently was not to cover any part of it. This grant is placed by *Smith* in 1623, and is represented as given by king *Charles I.* the very same year in which the grant of *Maryland* was made out to lord *Baltimore*. By this we have demonstrative evidence that *Smith* antedates it, by near ten years. *Charles I.* began to reign as late as 1625; and the grant of *Maryland* did not pass the great seal until the twentieth of June 1632. Admitting therefore that the grant to Sir *Edmund Ployden* was as early as that of *Maryland*, it is two years later than the grant to the earl of *Warwick*, which was made out by the great council of *Plymouth* in 1630, and received royal confirmation, under the great seal the same year. It appeareth therefore that the grant of *Connecticut* is prior to all patents, which can be produced or set up against it. It is worthy of observation in this place, that after a long contest between lord *Baltimore* and the *Penns.* respecting the boundaries between them, they were obliged to yield territory to his lordship, on this ground, that his grant was prior to that of *Pennsylvania*. For the same reason they ought to yield territory to *Connecticut*. We have here a good precedent in favour of this colony.

ANOTHER

† *Smith's history of New-Jersey* p. 20, 21. The account which the examiner gives of the extent of this grant is taken from a romantic pamphlet, large extracts from which *Smith* has inserted, in a marginal note. In this there are not less than two or three different accounts given of the boundaries of it,

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ANOTHER thing which the Dr. may possibly think of importance, and which he may deem ungenerous in me to pass without notice, is what he attempts to prove by several letters from governor *Wolcott* and governor *Fitch*. He saith, That in 1754, when the *Connecticut* people first sat down on some of the *Susquebannah* lands about *Wicoming*, in this province, their proceedings were disclaimed by their own colony. To evince this he brings into view a letter from governor *Wolcott*, and two others from governor *Fitch*.

The letter from governor *Wolcott* bears date March 13th, 1754. In this he says, "Some of our inhabitants hearing of this land at *Susquebannah*, and that it was north of the grant made to Mr. PENN, and that to *Virginia*, are upon a design of making a purchase from the *Indians*, and hope to obtain a grant of it from the crown. But Mr. *Armstrong* informs me that this land is certainly within Mr. Penn's grant---if so, I don't suppose our people had any purpose to quarrel with *Pennsylvania*. Indeed, I don't know the mind of every private man; but I never heard our leading men express themselves so inclined."

On this I would observe, that governor *Wolcott* does, by no means disclaim the right of the colony to the lands in dispute, nor any thing like it; but gives us clear evidence that he had never paid so much attention to the matter, as even to know that the grant made to Mr. *Penn*, was an encroachment on the rights of *Connecticut*. He had never heard the leading men of the colony declare, that they were resolved to quarrel with *Pennsylvania*; nor does it appear that he had ever heard them say any thing concerning it. Will it then certainly follow, that because the leading men of the colony had not declared their resolution to quarrel with *Pennsylvania*, or because they had said nothing respecting it, that they disclaimed and gave up their right? By no means.---They might have been fully persuaded of their right, and nevertheless have not determined as yet to quarrel with the proprietaries, nor have

have ever said any thing particularly on that point. Indeed, if they were all as unacquainted with the affair as the governor, there was no ground for them to say any thing on this head; as on this supposition, they were not apprized of any claim or challenge of Mr. Penn to said lands. And as to that clause, in which the governor says, that the purchasers hoped to obtain a grant of it from the crown, it doth not give the least evidence that *Connecticut* did not hold their title to said lands, to be good and valid. They might be well satisfied, that their title was good, and yet the purchasers design an application to the King, under the title of *Connecticut*, to make them a distinct colony, and to confirm the lands to the corporation they designed to have made, by a royal charter. There is nothing therefore in this letter, which is at all to his purpose. It does not afford the least evidence of what he is pleased to affirm.

As little to his purpose are the letters written by governor *Fitch*.--In his first letter, of the same date, of governor *Wolcott's*, he writes, that he knew of nothing done by the government, to countenance the purchase of the *Susquehannah* lands, and that he was inclined to think that this wild scheme, would come to an end, though, says he, "I can't certainly say." In another letter he writes, "I should be glad it was in my power to do more services than I am at present able to afford, to prevent the ill consequences you have so well pointed out, as proceeding from the purchase of those lands on *Susquehannah*, in the manner in which some people of this colony have presumed to act.--When governor *Wolcott* made public governor *Hamilton's* letter about this affair, I imagined it would have discouraged the further proceeding in this matter.--I know of no better way with us at present, than to represent the state of the case in the same public way, by which all persons concerned may see the consequences of such a procedure."

On these letters I shall only remark, that the government's

ernment's not giving countenance by a formal act of the general assembly, to the purchasers of the *Susquebannab* lands, is far from disclaiming their title to said lands. Their not acting in this case cannot, in reason, be looked upon as a denying or renouncing of their right. Nor can governor *Fitch*'s terming the purchase a *wild scheme*, and representing it, as what would probably come to nothing, be, by any means, construed as a disclaimer in law. What he wrote was his own private opinion, and not the opinion of the colony. It doth not appear that either governor *Wolcott*, or governor *Fitch* were authorized by the colony to write as they did.

There is therefore no foundation for what the Dr. affirms, That the colony disclaimed the proceedings of the *Susquebannab* purchasers. Besides, had they disclaimed their conduct it would have been far, very far indeed, from disclaiming the colony's title to the said lands. Yet on such a sandy foundation, or what is still worse, the Dr. builds a great part of his arguments, in favor of the *Pennsylvania* claim.

As to the acts of the general assembly of the colony of *Connecticut*, respecting Mr. *Hazard*, and the *Susquebannab* company in 1755, they are so far from being a disclaimer, as the Dr. insinuates, that they afford evidence, that *Connecticut* considered their charter as covering the lands west of the province of *New-York*; that Mr. *Hazard* and his associates, and the *Susquebannab* purchasers were in the same opinion. Otherwise there would have been no more need of their being recommended to his majesty by *Connecticut*, than by all the colonies on the continent, nor any more propriety in their soliciting a quit claim and recommendation from *Connecticut* than from any other colony.

I SHALL conclude this part of my essay with the questions referred to the crown lawyers, with their answers to them, and with observations on Dr. *Smith*'s remarks respecting them.

QUESTION I. Do the words *actually possessed and*
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occupied, extend to lands on the west side of the Dutch settlements, which were at the time of the grant of James the first in a perfect wilderness state, but divided from the English settlements by the actual possession of the Dutch?---And did the grant to the council of Plymouth mean to except in favor of foreigners, not only what they had actually planted, but all to the westward of such plantation?

ANSWER. *We are of opinion that the words actually possessed and enjoyed, do not extend to lands on the west side of the Dutch settlements, which were at the time of the grant of James the first in a wilderness state, though divided from the English settlements by the actual possession of the Dutch. And that the grant to the council of Plymouth did not mean to except in favor of any one, any thing to the westward of such plantations.*

QUESTION II. Have not the said governor and company of the colony of Connecticut the right of preemption, and the title under the crown to the lands aforesaid, within the limits and bounds of their patent aforesaid, lying westward of the province of New-York, and not included in the charter of king Charles the second to the duke of York, notwithstanding the several settlements of boundaries between the colony on the east and the province on the west, made as well by agreement between the parties as under the royal authority, and notwithstanding the subsequent charter to Sir William Penn?

ANSWER. *The agreement between the colony of Connecticut and the province of New-York, can extend no further than to settle the boundaries between the respective parties, and has no effect upon other claims that either of them had in other parts; and as the charter to Connecticut was granted but eighteen years before that to Sir William Penn, there is no ground to contend that the crown could at that period make an effectual grant to him of that country which had been so recently granted to others. But if the country had been actually settled under the latter grant, it would now be a matter of considerable doubt, whether the right of the occupiers or the title*

title under which they hold, could be impeached by a prior grant, without actual settlement.

QUESTION III. What course of proceedings will it be legal and expedient for the governor and company of Connecticut to pursue on the whole state and circumstances in this case, in order to terminate all disputes and differences relative to said lands?

ANSWER. *In case the governor and company shall in point of prudence think it expedient to make their claim and support it, it will be proper either amicably and in concurrence with the proprietaries of Pennsylvania, or in case of the refusal of those proprietaries, without them to apply to the king in council, praying his majesty to appoint commissioners in America to decide the question, with the usual power of appeal.*

E. THURLOW,

AL^d. WEDDERBURN,

R^d. JACKSON,

J. DUNNING.

ON the first of these questions, the Dr. remarks, "It ought not to have been made a question, Whether by the *Plimouth* grant, the crown intended to "except the western part of this continent, beyond "the *Dutch* settlements, in favor of foreigners? For "that was never pretended by any one.

"There is a difference between *excepting* and *granting*; and the question should have been, Whether "any part of the western lands beyond the *Dutch* "settlements were ever granted, or could possibly "pass by the *Connecticut* charter? This would probably have brought a very different answer from "the learned council."

On this I would observe, that whatever was not excepted out of the *New-England* patent did pass to the original patentees at the time of that grant, and therefore there is no ground in this case for the distinction between *excepting* and *granting*. That which was not excepted by the grant, within the boundaries prescribed, was granted in the most express and ample manner. These lands therefore were as firmly granted

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granted to the original patentees as any land within the *New-England* patent. They therefore passed to the earl of *Warwick*, and from him to lord *Say* and *Seal*, &c. and from them to the colony of *Connecticut*. They are clearly included within the boundaries described, both in the patent to the earl of *Warwick*, and in his majesty's charter to this colony. That these patents extended westward to the south sea, hath been clearly shewn.---We have also clear evidence that the council of *Plimouth* were acquainted with the extent of the territory which they granted. There is not any reasonable ground therefore to contend that these lands were not granted, and did not as firmly pass to the patentees, as any lands described within the several patents. There was the same conveyance of the whole of the land, not excepted, as there was of any part of it.

BESIDES, it is granted, by the counsel of the proprietaries, that the lands to the westward did pass by said patents. Lord *Camden* repeatedly shews this to be his opinion. "I am of opinion, therefore, that the province of *Connecticut*, has no right to resume their ancient boundary by over leaping the province of *New-York*." These words evidently imply, that the ancient boundaries of *Connecticut*, were west of the province of *New-York*, and that they must over-leap that and extend their colony westward, in order to resume their ancient boundary. Again he says, "*Connecticut* boundary has been reduced by new confines, which restored the lands to the crown and laid them open to a new grant." But if these lands never were granted to *Connecticut*, how can they be said to be reduced to new confines? How could they be restored to the crown? That which never was granted, but had always remained in the crown cannot with any propriety be said to be restored to it. How could they be granted anew, if they never had been previously granted to *Connecticut*?

On the second question the Dr. remarks, That
"this like the former is what the logicians call, *pe-*

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“ *titio principii*, and would have been needless if the
 “ first question had been fairly stated. But the main
 “ point in dispute is here still taken for granted, viz.
 “ That the lands westward, of what was the *Dutch*
 “ settlement and claim did *pass* by the patent to *Con-*
 “ *necticut*.”

ON this it is only necessary to observe, That the answer to his remark, on the former question, is a complete answer to this. These lands did as expressly *pass* to *Connecticut*, as any lands within the limits of the grant. If any thing was granted these most certainly were granted also. The counsel for the proprietaries allow that they were granted. There is therefore no ground for such an observation. The crown lawyers themselves, do in effect, say that these lands have been granted to *Connecticut*. Particularly, in these words, “ There is *no ground* to contend, that
 “ the crown could at that period make an effectual
 “ grant to him of that country, which had been so
 “ recently granted to others.”

As to what the Dr. further remarks relative to the second question, that two different points are blended together, there is not the least foundation for it. This will appear with the clearest evidence, upon the least attention to the question. In this it is enquired, Whether *Connecticut* have not the title under the crown to the western lands, “ notwithstanding the
 “ several settlements of boundaries” between the two colonies of *Connecticut* and *New-York*, “ made as well by agreement between the “ parties, as under the royal authority.”

It is here very observable, that reference is had to all the settlements between the two colonies, whether by agreement or under the royal authority, and then it is enquired, whether, notwithstanding all these settlements, *Connecticut* have not the right under the crown. There is not therefore the least defect in the question. It would have been impossible to have stated it in a more ample manner. The answer therefore, if it is to be considered as a reply to the question as it stands,

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is full and decisive. It is true the agreement between the two colonies confirmed by the crown is the only settlement mentioned in the answer. The reason why this only is mentioned, was doubtless this, that all the other settlements were temporary, and never received the royal confirmation, and because this, if any thing, must barr the title of *Connecticut*, to the country westward of the province of *New-York*. This lord *Camden* calls the *stronger line or settlement* marked out by agreement, &c. Now with regard even to this settlement which the noble lord represents as much stronger, than the settlement under the king's commission, the state lawyers say, That it "can extend no further than to settle the boundaries between the respective parties, and has no effect upon other claims that either of them had in other parts." In this view no answer could possibly have been more full and determinate.

WHAT the Dr. remarks relative to the possession under the proprietaries, hath been obviated already, and deserves no further notice.

I have now with particular care attended to every objection, of any weight, against the title of the colony to the western lands, and am prepared to submit it to the public whether there be any real force or substance in them, which can either in law or equity operate against it.

P A R T III.

IN the former parts of this essay particular attention has been given to the title of the colony to the contested lands, and to such objections as have been made against it, by the ablest writers and speakers in the opposition.

In this last part I shall pay some attention to matters of a different nature, which seem to be broached, principally, to inflame the people, and to excite popular clamour.

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It is given out, in a high tone indeed, That by attempting to assert our claim to the western lands we shall endanger, to be sure, if not loose our charter; That the expence of the colony in that affair already has been *great* and alarming, and that it will be *immense* and *ruinous* should it be prosecuted to a final issue :---That were our title good and valid in law, there would be no prospect of success. It will never be made a question by the king in council, What is *law* or *equity*, in the case, but what is best for *us* ? It will be determined on political principles and state reasons, and on no other.---But, that even on supposition we should have all the success we desire, the acquisition of a country so fine and extensive will utterly undo us. "A defeat would be very detrimental, but a victory must be *absolute ruin* to the colony."

SOME attention shall be given to each of these points, a fair and rational state of the case both as to advantages and disadvantages, shall be attempted; and I shall venture to suggest what method of conducting the affair appears most feasible, attended with the least danger and expence, and the most happily calculated to restore general harmony and tranquility to the colony.

DR. SMITH seems to have been apprehensive, that all his *solid* arguments, as he is pleased to term them, would not be of sufficient weight to convince *Connecticut* of the validity of the title of the proprietaries, or that their own is not good and valid in law to all intents and purposes: He therefore attempts to alarm them with the doleful ideas of the loss of all their charter rights and privileges, should they once venture to assert and prosecute their claim. This says he "Will speedily bring their charter to the test; which is, indeed, the only *fragment* of all the old *impracticable New-England* charters now left; and it is high time," &c.---It may be of *fatal consequence* to it---bring it to the test by *scire facias* or *quo warranto*---It may be adjudged void." &c.---Nay, he

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he is so deeply concerned for the charter and civil constitution of *Connecticut*, which he certifies us, in a late publication, "is not such a one as he would have made his choice to live under," that he is *careful* to tell us, that "Besides defect of limits, in it's original state, *that charter* has many other defects, which it may be *prudent* and *expedient* for them to keep out of sight."

What thanks are due, from the inhabitants of this colony, to Dr. *Smith* for his deep concern for our charter rights !---And that he hath so repeatedly admonished us of the *dreadful* precipice !

BUT is he not after all, entirely mistaken in this point ? Is not all that he hath said as void of any foundation as the baseless fabric of a vision ? Is it possible that the charter should be endangered by a trial of property, before his majesty, the common father of his people in a way entirely legal and constitutional ? By no means.---Nothing can be more dutiful than an appeal to his majesty in council for the decision of a cause of this nature and magnitude. Have not the counsel for the king, even the state lawyers, directed us to this method ? Nay, more than this, hath not the noble lord CAMDEN given it as his opinion, that in order to terminate this dispute *Connecticut* must be heard ? But if *Connecticut* must be heard, they have, even in his lordship's opinion, some ground of claim, or colour of title at least. It cannot therefore be criminal to assert and maintain our claim and title. It cannot expose our charter or endanger any of our just rights and privileges.

WERE this indeed the case, that corporations endanger their charters by prosecuting their claim to such lands as are expressly and amply conveyed by them, they would be worth but very little, and the charter of the proprietaries would, by the present dispute, be brought into a situation no less perilous than that of *Connecticut*. In point of prudence and expediency it would concern them no less than *Connecticut* to decline the dangerous combat. Especially, since

since the charter of Sir *William Penn* is an encroachment upon a prior grant, repeatedly made and confirmed by royal authority, and is also one of the most *confused, inconsistent, unintelligible* patents, probably, in all *North-America*, and perhaps upon the face of the earth *. How is it then, that the Dr's heart trembles and bleeds, as it were, for the *Connecticut* charter and constitution, while he is not at all alarmed with regard to the charter rights and privileges of *Pennsylvania*? Whence ariseth this partiality?

BUT further it may possibly be urged, that the danger lies not here, but the great difficulty is, That his majesty was *deceived* in his grant to *Connecticut*, and that when they shall venture to contend before him, on the footing of their patent, the *deception* will appear, and this will put all to the hazard. Should this be urged, the objection is answered already. I have given, it is humbly conceived, demonstrative evidence, that this was not the case. Much more however, might be said, on this head, were it worth while to resume it. I wish only to mention two or three things further. Especially, that the limits of the *Connecticut* patent are much less extensive than the limits of the other old colonies granted about the same time. The province of *Massachusetts-Bay* greatly exceeds it as to the extent of boundaries. Had this been through mistake or *deception*, it is to be presumed that the king and council would have cut short their limits in the second charter: But even in that which was granted as late as the year 1691, when the country was well known, the boundaries of the province were much enlarged.

Hutchinson's History.

It will be to my purpose further to observe, that all the grants made after the resignation of the *South-Virginia* patent, in 1609, have the same extension westward to the south sea in a direction parallel to the equinoctial line. This was the direction and extent of the great *New-England* patent in 1620; of the

* The extract of the charter to *William Penn* on which I have remarked in these sheets is taken from an attested copy, from the office in *Great-Britain*.

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the patent of the *Massachusetts* in 1628 ; of that of the earl of *Warwick*, in 1630 ; and of the charter of *Connecticut* * in 1662. This perfect consistency of such

* Dr. *Smith*, that he might prevent the *New-England* patents from having an extension westward, to the lands claimed by the proprietaries, endeavours to prove, that the direction of all these patents, was north or north-west. He attempts to prove this from these expressions, which he saith were in the great patent grant of 1606, viz. " *Directly over against the sea coast*" and " *directly into the main lands*, by the space of one hundred miles." He further quotes Dr. *Douglasi*, as an evidence of it, Who says that it was the first notion to " lay out settlements of one hundred miles on the shore, and one hundred miles back into the country, so as to make districts of one hundred miles square." He further says, " That the great patent to *South Virginia* expressly mentions west and north-west from sea to sea." He further insisteth that *Connecticut* understood it in this view. This he seems to imagine he has proved from a reply of the commissioners to the *Dutch* claim of all the lands along the coast from *Cape-Hinlopen* to *Cape-Cod*. It is in these words, " From which, drawing any line to the north, north-west, or west wholly takes in, or encroaches upon all the united colonies." To this I would observe, that it may all be refuted out of his own mouth. Speaking of the confusion of some of the old grants, he says it all arose from this, that their " places of beginning were not fixt at degrees or minutes of latitude. For had they been so fixed, and directed to carry their breadth or latitude throughout, no contest could have arisen, unless the same latitude had been twice granted." Agreeably to this, it is impossible, that the original grants, which have been mentioned, could have any other direction, than that of due west : for they were all confined within degrees of latitude, as to their breadth and are described as running west to the south sea in length and longitude. The old *Virginia* patent in 1609 was bounded north to the fortieth degree of northern latitude, from the equinoctial line, and gave a breadth of about 400 miles on the sea coast. As it was bounded north by the fortieth degree of latitude, it could have no other direction than that of due west, from sea to sea. There was no land granted north of the fortieth degree from the equinoctial line, and therefore it could not have a direction in the least respect deviating from a line parallel with the equator. This was the case with the north and south *Virginia* patent, in 1606, it expressly limited both north and south *Virginia*, within degrees of latitude, and therefore they could have no extension but what was due east and west. This was the direction of the *New-England* territory granted in 1620. The patent describes " all that part of *America*, lying and being in breadth from 40° of northerly latitude from the equinoctial line, to the 43° of the same northerly latitude, inclusively,

a variety of grants, made at so many different times, clearly evinceth, that their being bounded westward by the great south sea, was so far from being through *deception* or *accident*, that it was *absolutely* the effect of *design*, of a *consistent* and *fixed plan*. That this especially was the case with regard to the *Connecticut* charter, is further to be argued from this consideration, that it was agreeable to the Royal Will, and the original design of the great *New-England* patent, that special encouragement should be given and a large extent of country granted, to such adventurers as had run the greatest risk, and done the most for the advancement of his majesty's honor and dominion, and that it should be proportionate to the number as well as merit of the planters. Says his majesty, "Our will and pleasure is, that respect be had as well to the proportion of the adventurers, as to the special hazard;

"and in length of, and within, all the breadth aforesaid, throughout the main lands, from sea to sea." I dare bid a challenge to Dr. Smith, and to all the mathematicians upon earth, to lay out this territory in any other direction, but that of *east* and *west*, in lines parallel with the equator, in any sort of consistency with the express words of it. Does he not rather insult our understanding, than reason soberly, when he pretends to prove that the direction of the territory granted in these patents was *north* or *northwest*? What *Douglass* says relative to their running inland 100 miles, is only with regard to some of the first grants, before 1609: He says "afterwards the style was *due west* to the south seas." Vol. I. P. 114.

The declaration of the commissioners is no more to his purpose than if he had quoted the first page in the Alcoran. As the *New-England* territory extended to the 48° of northern latitude, and westward to the south sea, so it was impossible to draw any lines *west*, *northwest*, or *north*, from *Cape Henlopen* or *Cape Cod*, which would not incroach far upon them; and this is all they could mean. They knew that the direction of the *New England* territory was *due west*. As to the terms, *directly* over against the sea coast, and *directly* into the main lands, the meaning is, that the lands should extend directly in a west line from the sea, or *Atlantic* ocean, into the main lands to the south sea, within the degrees of latitude described. This maketh all the terms of these grants consistent, and they can be reconciled no other way. This is agreeable to the sense which hath always been put upon them, and is consistent with the lines and boundaries of the several ancient southern colonies. They all extend west in lines parallel to the equator, as hath been observed already.

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"hazard, exploit or merit of any person so to be re-
 "compensed, advanced, or rewarded." On these principles the first planters of *Connecticut* ought, in all reason and justice, to have had as extensive a territory as any colony whatsoever. No adventurers had endured greater hardships, performed nobler feats, and been at greater expence than they, in making settlements in the *American* wilderness. Their expence in purchasing the native right to the country, in the purchase made of their lordships of the right of preemption, and in subduing that bloody and terrible nation, the *Pequots*, by far exceeds the expence of any other colony, so far as I am able to collect from the records and histories of those ancient times. No colony, at that day, extended their settlements with such rapidity as they : and it was wholly through their means that *Connecticut* was not a province of the States General. These eminent services, which *Connecticut* had done the crown, were well known to his majesty when his LETTERS PATENT were issued under the broad seal, and are particularly recognized in them. Can there, therefore, be a more groundless, idle and false representation than this, *That his majesty was deceived in his grant* ? Or what can betray greater ignorance of the history of ancient transactions ? Is not the supposition, that *Connecticut* was to be cooped up within the narrow limits, between *Narraganset-Bay* and *New-Netherlands*, circumscribed within the smallest territory of any of the *North-American* colonies, absolutely incompatible with the royal will, as specified above, as well as with the words of the charter ? Nay, is it not an injury to the royal honor and munificence, as well as a strained and illiberal construction of the charter, to suppose it ?

SHOULD it be insisted that our charter privileges are endangered by extending jurisdiction to the controverted lands, it may be replied that it can be no forfeiture of any privileges to exercise such powers, as are vested in the colony, by charter, within the express and known boundaries of it, and within a ter-

ritory purchased and settled by their own people. No danger therefore can arise from this quarter. The lands are certainly, as clearly comprised within the limits of the charter, as any lands within this colony, and are as expressly and amply conveyed. We have a fair ground of claim and title, and when this is the case, it is safe, no doubt, to exercise jurisdiction. Were the colony to exercise powers with which they are not vested by charter, this might probably expose them; but they are vested with the right of making towns and counties within their own limits, and therefore this may be done with safety. Of this opinion are some of the ablest attorneys in this colony. Most of the honorable gentlemen of the *council board*, among whom are several gentlemen of distinguished eminence in the law department, acted for the extending of jurisdiction to the western lands, as safe and expedient, the last assembly. Indeed one special design of the charter, and one principal condition of it, is, That the legislature "apply themselves to take care for the best disposing and ordering of the general business, and affairs of, and concerning the land, and hereditaments herein after mentioned to be granted, and the plantation thereof, and the *government of the people thereof.*" By this clause, in the charter, the legislature of this colony are as expressly obliged to govern all the people settled upon the lands granted by it, as they are, by a subsequent clause, to pay the fifth part of all gold and silver ore. Whatever people, therefore, are settled upon lands, which they claim and challenge, as within the grant made in this patent, may claim their protection and government, and they are bound in loyalty to his majesty, and in faithfulness to the trust reposed in them, to take care of their affairs and govern them. Their charter therefore is not endangered by extending jurisdiction to the people settled on the lands granted in it, and which they claim and challenge, by virtue of it. By no means.---They would rather expose themselves and the colony should they neglect to govern them.

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PENNSYLVANIA are not affraid of loosing their charter by extending jurisdiction to the controverted lands, and by making laws *severe*, and even *sanguinary* respecting the settlers there ; which, perhaps, neither their own charter, nor the *British* constitution, will, by any means, warrant. Is it not equally, nay, more safe for us, to govern our people there according to our laws ?

In a word, I cannot find that ever a judgment was obtained against the charter of any corporation for exercising jurisdiction constitutionally, within the express boundaries of their patent. If there hath ever been any thing of this nature, it was in the *despotic* and *detested* reign of JAMES II. when the city of *London*, and a great part of the corporations in *England* were robbed of their charter rights and privileges ; and can never, in reason, be pleaded, or even mentioned, as a precedent in any case whatever.

WITH regard to the expence, which the colony hath been at already, relative to the western lands, the whole of it, so far as I am able to find, upon the most careful examination, does not amount to £.350*, which is considerably less than the fifth part of a farthing on the pound in the general list of the colony. The proportionable part of this charge for such as are £.100 in the grand list, is somewhat less than five pence.

WHAT will be the expence of prosecuting the affair to a final issue can be determined, with the greatest probability, from the charges which have arisen in causes of a similar nature. The *Mason* cause, as it is commonly termed, during the whole time of Dr. *Johnson's* residence in *England*, and 'till it was finally issued, cost the colony something short of £.7000 L.M.

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† * The account of Mr. <i>Life</i> , our agent, was	£.	133	—	10	—	0
Commissioner's bill	—	—	—	172	—	00
For collecting the papers and stating the case I allow	—	—	—	30	—	00

£. 335—10—0

Besides this I know of no direct expence of which the *Susquehanna* cause hath been an occasion to the colony.

This is less, by considerable, than one penny on the pound in the grand list*. But that the *Susquehanna* cause will ever be protracted to the same length, or be of one half the expence to the colony, is by no means credible. On the first application for commissioners, this cause will be determined; for if commissioners are appointed to settle the boundaries between the colony of *Connecticut*, and the proprietaries of *Pennsylvania*, it will be on this ground, that the two colonies are bounded on each other, and will determine the point, that we have lands to the westward of the province of *New-York*. If commissioners should not be appointed, it will be a determination that we have no lands in those parts, and will be a final issue to the business. The cost of this cannot be great. It is unreasonable to suppose, that it will be the one half of what the colony expended in the *Mason* cause. Eighteen pence or two shillings, therefore, on each £. 100 in the general list is the utmost of the expence which may reasonably be expected to arise, to the colony, in order to determine the point, whether we have lands west of the river *Delaware* or not.

As to this objection, that were our title good and valid in law, there would be no prospect of success, as the cause will never be determined either on principles of law or equity, but wholly on *state reasons*, and *principles of policy*; I would reply, That it does little honor indeed to his majesty in council, and is such an injurious imputation on that high court of the nation, that I had much rather it should be made by others than myself. I will maintain nobler sentiments of his majesty, and of that high court. Indeed *Connecticut* have reason to entertain sentiments entirely different from these. In the controversy between *Connecticut* and *Rhode-Island*, respecting the *Narraganset* country, which lasted more than sixty years,

* The grand list of the colony returned last October amounts to £. 1,795,807 - 9 - 7. One penny on the pound raises about £. 7495.

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years, the king and his commissioners rigidly adhered to the charter of *Connecticut*, and the cause was determined according to *priority of grant* and *strict law*, time after time, in favor of the colony. Had not *Connecticut* given up the country, in dispute, by agreement, it is probable, it never would have been adjudged to *Rhode-Island*.

IN the controversy between this colony and *Mason*, money was advanced by the lords and noblemen to assist him in the prosecution of his suit. They could expect nothing but to loose the whole of it, if the cause should go against him. Yet, when law and equity appeared to be on the side of *Connecticut*, the cause, even against their own particular interest, was determined in favor of the colony.

FURTHER, the sentiment which the objection would insinuate is big with the most dangerous and absurd consequences, and has a most *mischievous* and *destructive* aspect. For if charters are not legal conveyances of lands, jurisdiction, and privileges, and are not to be construed and acted upon according to the true and natural meaning of what they express, explained and understood in the most favorable point of light for the several corporations to which they are granted, but are to be considered and acted upon only in a political view, as the king and his council shall judge best for them, then they are good for nothing, they are no security at all, and there is in fact nothing conveyed or secured by them. They leave matters just where they found them. This is, at once, in effect, to demolish all charters and patents. If what the objection seems to aim at were true, corporations are just as well without them as with them. They are left wholly at the arbitrary will of their sovereign, and the royal declaration under the broad seal stands for nothing. This is a principle therefore too absurd and shocking to be admitted. It is also contrary to what is true in fact. Charters and royal conveyances are not viewed and treated in this manner, nor have they been. But on the contrary, jurisdiction, privileges,

privileges, and property have been, time immemorial, considered as legally conveyed and secured by them, agreeably to the natural and genuine meaning of them; and have been looked upon as the most permanent security, which subjects can have, of right and property. In fine, the supposition that royal grants, under the great seal, are binding only so far as shall please the king, and that what he is to regard in determining points relative to them is not what is just and legal, but what shall suit his own convenience, at that time, at once renders the king and his council *ridiculous*, tends to destroy all mutual confidence between him and the subject, and is pregnant with destruction to all civil peace, liberty and happiness.

BUT to admit, for once, the shrewd supposition, which may, by no means be admitted, are there not political reasons which will operate more forceably in favor of *Connecticut* than of Mr. Penn? If the government look with an envious and unfriendly eye on the liberties of *Connecticut*, do they not with equal, yea with much greater concern view the growing wealth and power of Mr. Penn? Can there be any thing more dangerous to kings, than subjects possessing such *immense wealth*, such *extent* of territory, and being at the head of such a *number* of people? Should he be allowed to possess all the lands within the limits of his charter, and should they all be once well settled, he would doubtless be the most opulent and formidable subject which ever was in the *British* empire. The famous and powerful earl Godwin whose son made his way to the throne of *England*, doubtless, was not so *wealthy* and *powerful* a subject, as will be the governor of *Pennsylvania*, when this shall once be effected. It must therefore be one of the greatest blunders in politicks imaginable, to suffer him to possess so fine and extensive a country. This would both *endanger* the *peace* of the *crown* and the *liberties* of *America*. It would lay a fatal foundation for his setting himself up, in some future period, to be the GRAND MONARCH of *North-America*.

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It is not, by any means, my design here to intimate, that the proprietaries are less loyal than any of his majesty's faithful subjects, or that the inhabitants of *Pennsylvania* are not as loyal a people as any on the *American* continent. No, far, very far, am I from imputing the least disloyalty to them. I readily grant they are as loyal as the people of *Connecticut*, or as any other people in his majesty's dominions.

HOWEVER, I think it would be highly dangerous and impolitic to suffer any man to possess, such an extent of country, such *prodigious wealth* and *power* as Mr. Penn will most certainly possess should all the lands comprised within his grant be once completely settled under his possession and government. What may not a man do with such a *fund* of riches, at the head of an almost infinite number of people?

FURTHER, nothing can be more impolitic than to disregard ancient patents and charters, and to give final decisions, on them, with regard either to liberty or property, contrary to what is granted and stipulated in them, consistent with their most natural and favorable construction? This would at once prostitute that high court of the *king in council*, and render it contemptible. It would be an attempt upon, and in effect, a striking at all the charters and corporations in the nation. For there can be no violation or infraction of charter rights and privileges, on the part of the crown, but what affects the nation in general. This hath ever been found dangerous to kings, and has, in some instances, shaken them from the throne. It is a point of politicks highly important to maintain the reputation and honor of national courts.

BESIDES, should *Connecticut* obtain the lands in controversy, they would settle them with their own inhabitants, the natural increase and growth of their own colony. This would be much more advantageous to the parent-state, than to have them settled by emigrants from the mother country, as will probably be the case, in part, at least, should the lands be finally adjudged to the proprietaries.

WERE

WERE policy therefore to govern in the decision of the cause depending between the two colonies, I must think, that, even in this case, it would be given in favour of *Connecticut*.

I AM now prepared to encounter the other objection, which is truly the most *extraordinary* and *marvellous* I believe ever advanced: That if we should obtain the contested lands it would finally undo us. "A victory must be absolute ruin to the colony." Wonderful saying this! The possession of a large tract of the finest land in the world will undo us! Did farmers ever come into this sentiment, or will they ever imbibe it, that good farms will undo them? Are the *sage politicians*, who trump up this objection, afraid indeed, of being undone by farms and money? Will it undo our farmers to have fine tracts of land, on which they may settle their sons and plant new townships, and new churches, under one of the most mild and free governments upon earth? Will this be more ruinous than for them to emigrate into other governments, and pay large quit-rents, where the lands are less fertile and the winters much longer and more severe? Some where they must and will go. It is thought that not less than 30,000 souls have emigrated from this colony into other parts in about twelve or fourteen years past. Would it be more ruinous to retain these our children in our own family, to protect and nourish them under our own wing, and to receive aid and help them, in common with others of our fellow colonists? Is it more eligible to have them tributaries and payers of quit-rents abroad, where neither civil or religious peace and liberty can be so amply enjoyed, as in this colony, than to settle them on our own lands, and within our own jurisdiction? Will a tract of country which might be sold for some hundred thousands sterling, and make a public fund sufficient annually to pay all our public expences to the end of time, enrich our college, and support all the schools in the colony utterly ruin it? Is not such an affirmation most astonishing and wonderful!

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BUT to attend a little more seriously to this matter; the territory in dispute, between the two colonies, is about 72 miles in breadth and latitude, and about 260 in length and longitude; containing more than twelve millions of acres. This sold at the moderate price of only one shilling per acre would raise a public fund of £. 600,000. The lawful interest of which would be £. 36,000.

THE management of all the affairs both of settlement and of government will be in the power of the general assembly; and is it not an absurd supposition indeed, that we have not men of sufficient abilities, in this colony, to improve such an acquisition *greatly* to the public emolument?

Is it objected that should such an acquisition be made, there would be such an emigration, at once, from this colony, as would depreciate our lands and impoverish this part of it?

I reply that it is, doubtless, in the power of the General Assembly, so to conduct the affair, as that the colony shall receive very little damage in this way.

Is it objected, that the western part of the colony will soon be the largest, and our Assemblies, and Courts will be removed from their ancient seats; the reply is, that the Assembly has been fixed by ancient acts and solemn compact, for many years, at *Hartford* and *New-Haven*, which, it is apprehended, cannot be violated. Besides it will be easy for the Assembly to provide against this, by the making of large towns, and fixing the number of members which they shall send to the Assembly. This may be as firmly and unalterably fixed as was the number of peers in *Scotland*, at the union of the two kingdoms, of *England* and *Scotland*.

As to all other courts distinct circuits may be made, and justice administered with the greatest facility, without any kind of detriment to this part of the colony.

THE province of *Massachusetts* exercise jurisdiction over the province of *Main*, which lies east of *New-*

Hampshire, and is divided from the other part of the province, by that colony, just as *Connecticut* is divided by *New-York*. The province of *Main* is about as large, as to territory, as the other part of the province of *Massachusetts-Bay*, and the extreme parts of it lie two hundred miles or more from the seat of government.

THE province of *New-York* is more than two hundred and fifty miles in length, nevertheless, it has not as yet been, and I believe never will be ruined by possessing and enjoying such an extensive territory. I never heard or read of any colony that was totally ruined by this means. I may therefore safely conclude, that this will not be the *absolute* ruin of this colony.

It shall only be further observed on this head, that should the colony, upon trial, find that it is like to ruin them, it will be an easy matter to resign it to the crown, to make sale of it, for a vast sum, or if they can do no better, they may make a present of it to the authors of the *admiral* objection under consideration. I am persuaded, they would accept it, and for once run the *awful* risk of the consequences.

THE public will now be able with very little assistance to form a probable and rational opinion with regard to the advantages and disadvantages of a trial of the *Susquehannab* cause.

THE *advantages* will be great, and many, should it finally issue in our favour. A fine interest will be secured to thousands of our fellow colonists, who are settled and settling on the western lands, and who, otherwise, many of them must be absolutely ruined in their estates, and driven back on this colony in extreme poverty, to our great trouble and expence. The inhabitants of the colony, by such an acquisition, will be able to settle their posterity in a fertile country, in the same latitude with our own, under the enjoyment of all the privileges of this free and excellent constitution.

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sell, as well as to settle; by the sale of which it may be greatly enriched, our schools and college receive a more ample support, and a great part, if not the whole of our public expences be defrayed. *Connecticut* would be raised to a degree of importance and influence in the *American* colonies, to which she had ever before been an entire stranger: The growing wealth and power of the *PENNS.* receive a noble check, and they would become less dangerous to the crown, and to the liberties of *America*. These are *advantages* great and desirable indeed!

ON the other hand, the advantages, in case the suit should go against us, will be disappointment, and the loss of eighteen pence or two shillings on each hundred pound, in the general list; and it may be not half that. And even these *disadvantages* will in part be compensated by this, that a final issue will quiet the colony, and put it out of the power of designing men, on the one side, and on the other, any more to embroil it with this matter.

FROM this view of the case, I humbly conceive it is not difficult to determine what method it will be best to pursue in the affair. To prosecute the matter to a final issue before the king in council as soon as may be, must doubtless, on the whole, be most eligible.

THAT it must have a trial almost every man, who has a tolerable acquaintance with the case, seems to allow. The assembly have gone so far they cannot with honor or justice make a retreat.

It would, doubtless, be highly injurious to the colony, to the settlers on the controverted lands, and to posterity to give up our claim.

BUT if trial must be had, it is certainly best to bring the cause to as speedy an issue as may be. The longer it is disputed and opposed, in the assembly, the greater will the expence be to the colony: the longer the final decision is deferred, the greater will be the number of settlers on the contested lands, and the greater and more general will be the mischief of a defeat

defeat at last. And besides the sooner the affair is issued, the sooner will peace and tranquility, a sweet and invaluable enjoyment, be restored to the colony. I venture therefore to make an appeal to the public, whether if we act either upon principles of honor, of justice or of humanity; whether if we consult our peace or happiness, or even supposing we should consult nothing but our *purse*, it is not best to prosecute the affair to a final decision, with all convenient dispatch!

C O N C L U S I O N.

UPON the whole, the country claimed by *Connecticut* was granted, by the council of *Plimouth*, to the earl of *Warwick*, in 1630. The same year it was confirmed to him, by his majesty, under the great seal of *England*. This he assigned to lord *Say* and *Seal*, lord *Brook*, &c. and it was, at a great sum, purchased by the first planters of this colony, as represented, to his majesty, in their petition; and is, in the most firm and ample manner, confirmed to the governor and company, by royal charter. These patents were prior to all others ever given of the same territory. The country conveyed to *Connecticut*, by them, hath never been surrendered, forfeited, or any way given up, either to the crown, or to any person, persons, or communities whatsoever. The colony still remain as completely vested with the title as ever they were.

THAT it was the design of his majesty to grant this whole territory to the colony of *Connecticut*, it is apprehended, hath been sufficiently evinced.

IN point of possession, it hath been shewn, that the title of *Connecticut* is as good as that of the proprietaries, if not better.

THE colony have the opinion of the state lawyers, given upon a full view of the case, entirely in their favor. The expence of trying the title will be but small,

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small, and should a final decision be given in confirmation of it, the advantages, on many accounts, would be great.

We can hardly desire, therefore, to commence a suit on fairer prospects.

The country for which we contend is part of the inheritance and birth-right left us by our fathers. They encountered almost every danger, endured all manner of hardships, toiled and bled to obtain and transmit it, with the most ample immunities and privileges, to their posterity. Shall we give up the inheritance of our forefathers without a trial? By no means: Let us like men, like the descendants of ancestors so truly noble and heroic, arise and vindicate our title.

Justice and faithfulness not only to ourselves, but to our posterity, no doubt, require it.

These most certainly have been the sentiments of the honorable general assembly. Upon the most mature deliberation, and after they had obtained the opinion of council of the first eminence in the nation; in the law department, they, in a full house, affirmed their claim to the controverted lands: with a great degree of unanimity appointed a committee of both houses of assembly, to make report of the measures, which, on the whole, should be judged most safe and expedient to pursue relative to the affair. They made a report advising to all the measures, which have been since adopted by the legislature. As they have so maturely taken up the matter, it is to be presumed, that they will prosecute it to effect. Especially, may this be expected, since the freemen of the colony, have given such a public testimony of their approbation of the measures which they have taken, by a re-election of the governor, and of the honorable gentlemen of the *council board*, by far the greatest number of votes ever brought in for any governor or council in this colony*.

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* As Dr. Smith, in a late publication, in the *Pennsylvania Gazette*, and *New York Gazetteer*, has injuriously insinuated, that

As the cause is interesting and important I have endeavoured to treat the subject with coolness and candor. I have no particular interest of my own to serve, in this affair. I have no right or interest, in the controverted territory, more than has every free-man of this colony; nor do I know of any relative of mine that hath any particular concern or interest there, more than have all the inhabitants of the colony.

WHAT I have written on the subject, appears to me, to be founded in truth and reason. It has been written from a regard to the colony, and I think, truly designed for the public good.

THE time allowed me for the writing of such a tract has been much too short. I have been obliged to write every page with great haste, and to transmit the copy, sheet after sheet to the press, without being able to examine and correct it, in one collective view of the whole work. The composition for these reasons is much less accurate than, otherwise, it might have been, and I may with no small reason bespeak the candor of the public.

HOWEVER, I hope the most material arguments are brought into view, and so stated as that the reader will readily understand them. And on the whole, I cannot but flatter myself, that this large view of the case will give gentlemen, who have had an unfavorable idea of the colony's title more just sentiments respecting it, as well as more thoroughly establish others in their opinion of the legality and justness of our claim and title; and that the colony will, with union and a proper spirit, prosecute so important a cause to a final adjudication.

that the governor of *Connecticut* was acting at the head of a party, and that there were great numbers in *Connecticut* opposite to the measures of the last assembly, &c. I have thought it but an act of justice due to their honors and to the colony in general to insert the paragraph above.

An APPENDIX,

IN THREE PARTS,

Exhibiting several copies and extracts of ancient CHARTERS and PAPERS, to which reference is had in the preceding sheets; and also quotations from ancient history, reflecting light on the controversy in hand, as well as on the general history of *Connecticut*.

PART I.

CONTAINING copies and extracts respecting the colony of *Connecticut*, from 1630 until it's union with the colony of *New-Haven*, in 1665.

THE earl of *Warwick*, who was president of the council of *Plimouth*, in 1630, obtained a grant of said council of all that territory claimed by the colony of *Connecticut*, as comprised within the limits of their charter. King *Charles I.* the same year confirmed it to him by a royal patent. He gave a deed of it, the next year, to lord *Say and Seal*, lord *Brook*, &c. This is entered at large on the records of the colony of *Connecticut* with a caption as followeth, viz.

No. 1.

A copy of the old patent for *Connecticut*.

“TO all people to whom this present writing may come, Robert, earl of *Warwick*, sendeth Greeting in our Lord God everlasting.---Know ye, that the said Robert, earl of *Warwick*, for divers good causes and considerations him thereunto especially moving, hath given, granted, bargained, sold, aliened and confirmed, and by these presents doth give, &c. unto the right honourable William Viscount

Count Say and Seal, the right honorable Robert lord Brook, the right honourable Robert Rich, and the honourable Charles Fiennes, Esq; Sir Nathaniel Rich, Knt. Sir Richard Saltonstall, Knt. Richard Knightly, Esq; John Pym, Esq; John Hampden, Esq; John Humphreys, Esq; and Robert Pelham, Esq; their heirs and assigns, and their associates forever, 1631. all that part of New-England, in America, which lies and extends itself from a river there called Narraganset river, the space of forty leagues upon a straight line near the sea shore, toward the south-west, west and by south or west as the coast lieth towards Virginia, accounting three English miles to the league, and also all and singular the lands and hereditaments whatsoever, lying and being within the lands aforesaid, north and south in latitude and breadth, and in length and longitude, of, and within, all the breadth aforesaid, throughout the main lands there, from the western ocean to the south sea, and all lands and grounds, place and places, soil, wood and woods, grounds, havens, ports, creeks and rivers, waters, fishings and hereditaments whatsoever, lying within the said space, and every part and parcel thereof.---And also all islands lying in America aforesaid, in the said seas, or either of them on the western or eastern coasts, or parts of the said tracts of lands by these presents mentioned to be given, granted, &c. and also all mines and minerals, as well, royal mines of gold and silver, as other mines and minerals whatsoever, in the said land and premises, or any part thereof, and also all the several rivers within the said limits, by what name or names soever called or known, and all jurisdictions, rights and royalties, liberties, freedoms, immunities, powers, privileges, franchises, prehemencies, and commodities whatsoever, which the said Robert, earl of Warwick now hath or had, or might use, exercise, or enjoy, in or within any part or parcel thereof, excepting and reserving to his majesty, his heirs and successors one fifth part of gold and silver ore.---To have and to hold the said part of New-England, in America,

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rica, which lies and extends, and is abutted as aforesaid, and the said several rivers, and every part and parcel thereof, and all the said islands, &c. to them the said Viscount Connecticut Say and Seal, &c. their heirs and assigns, and old record their associates to their only proper and absolute p. 8, 9. use and behoof for evermore. In witness whereof the said Robert earl of Warwick, hath hereunto set his hand and seal, 19th March, 1631.

ROBERT WARWICK." (Seal)

Signed, &c. in

presence of
WALTER WILLIAMS,
THOMAS HOWSON.

No. II.

JOHN WINTHROP, jun. Esq; appointed governor of the river Connecticut, by lord Say and Seal, &c.

1635: "KNOW all men by these presents, that we Arthur Hasselrig, Bart. Sir Richard Saltonstall, Knt. Henry Lawrence, Henry Darley, and George Fenwick, Esqrs; in our own names and in the name of the right honorable Viscount Say and Seal, Robert Lord Brook and the rest of our company, Do ordain and constitute John Winthrop, Esq; the younger, governor of the river Connecticut, with the places adjoining thereunto, for and during the space of one whole year, after his arrival there, giving him, from and under us, full power and authority, to do and execute any such lawful act and thing both in respect of the place and people, as also of the affairs we have or shall have there, as to the dignity or office of a governor doth or may appertain. In witness whereof, we have hereunto put our hands and seals, this 18th day of July, 1635.

RICHARD SALTONSTALL,
HENRY LAWRENCE,

ARTHUR HASSELRIG,
GEORGE FENWICK,
HENRY DARLEY."

Five seals appendant impressed in one large piece of wax.

ARTICLES made, between the right honorable the lord Viscount Say and Seal, Sir Arthur Hasselrig, Baronet, Sir

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Richard

Richard Saltonstall, Knight, Henry Lawrence, Henry Darley, and George Fenwick, Esqrs; on the one part, and John Winthrop, Esq; the younger, of the other, the 7th July 1635.

FIRST, That we in our names, and the rest of the company, do by these presents appoint John Winthrop the younger, governor of the river Connecticut in New-England, and of the harbour and places adjoining, for the space of one year, from his arrival there.---And the said John Winthrop doth undertake and covenant for his part, That he will with all convenient speed repair to those places, and there abide as aforesaid for the best advancement of the company's service.

SECONDLY, That so soon as he comes to the bay, he shall endeavour to provide able men to the number of fifty at the least, for making of fortifications and building of houses at the river Connecticut and the harbour adjoining ---first for their own present accommodation, and then such houses as may receive men of quality, which latter houses we would have to be builded within the fort.

THIRDLY, That he shall employ those men according to his best ability, for the advancement of the company's service, especially in the particulars above mentioned, during the time of his government, and shall also give a true and just account of all the monies and goods committed to his managing.

FOURTHLY, That for such as shall plant there now in the beginning, he shall take care that they plant themselves either at the harbour or near the mouth of the river that these places may be the better strengthened for their own safety, and to that end that they also set down in such bodies, together, as they may be most capable of an entrenchment, provided that there be reserved unto the fort for the maintenance of it, one thousand or fifteen hundred acres, at least, of good ground as near adjoining thereunto as may be.

FIFTHLY, That for as much as this service will take him off from his own employment, the company do engage themselves, to give him a just and due consideration for

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W. SAY & SEAL, ARTHUR HASSILRIG,
 RICHARD SALTONSTALL,
 HENRY LAWRENCE,
 GEORGE FENWICK,
 HENRY DARLEY.

SIR Richard Saltonstall, the same summer, Winthrop's this commission was granted, sent a pinnace to take possession of Connecticut. She was in her return to England, in September or the beginning of October, cast away on Isle Sables. November 3d, 1635 Mr. Winthrop sent a bark of thirty tons and about twenty men, with provisions, &c. to take possession of the mouth of Connecticut river, and to begin the fort and buildings.

David Gardiner an engineer was appointed captain of the fort at Say-Brook. He represents, in a manuscript history, which he wrote of the Pequot war, That he was hired by Mr. Davenport and others, in behalf of their lordships, to come into New-England and assist in building the fort at Say-Brook.

ABOUT the year 1639, George Fenwick, Esq; came over and took possession of the fort and lands at Say-Brook.

At a general court March 27th, 1643, this vote is minuted on the records, "The court consenteth that the former answer shall be returned to the propositions made by the lords, the planters at present not coming to view, and if that please Mr. Fenwick to join with the plantations, it shall not infringe any of his privileges which belong to him."

WHAT these propositions were, or what was the answer given does not, at present appear, but this however is manifest from the record, That their lordships and the first planters had entered into some agreement relative to the settlement of Connecticut. And as Mr. Fenwick soon after joined with Connecticut agreeably to the proposition in the resolve of the general court, it appeareth that the answer

answer returned, be it what it may, was satisfactory to their lordships, and accepted by them. In consequence of which the following agreement was made between the parties, viz.

Agreement " Articles of agreement made and concluded betwixt George Fenwick, Esq; of Say-
with G. Fen- " Brook fort on the one part, and Edward
wick, Esq; " Hopkins, John Haynes, John Mason, John
Dec. 5. 1644 " Steel and James Boofy, for and on the behalf of the
" jurisdiction of Connecticut river on the other part, the
" 5th of December 1644."

" THE said George Fenwick, Esq; doth make over to
" the use and for the behoof of the jurisdiction of Con-
" necticut river, to be enjoyed by them forever, The fort
" at Say-Brook with the appurtenances :---All the land
" upon the river of Connecticut ; and such lands as are
" yet undisposed shall be ordered and given out by a
" committee of five, whereof George Fenwick, Esq; a-
" foresaid is always to be one.

" The said George Fenwick doth also promise, that all
" the lands from Narraganset river to the fort of Say-
" Brook, *mentioned in a patent* granted by the earl of
" Warwick to certain nobles and gentlemen, *shall fall in*
" under the jurisdiction of Connecticut, *if it come into his*
" power."

On the part of Connecticut it was stipulated, That the
said George Fenwick, Esq; " Should enjoy the housing
" belonging to the fort for the space of ten years" :---And
that a certain duty on corn, biscuit, beaver, cattle, &c.
which should be exported from the river's mouth, should
be paid him, during the term of ten years.

At a general court July 19th, 1644, " It is ordered that
" a letter be directed from the court to desire Mr. Fen-
" wick, if his occasions will permit, to go for England to
" endeavour the enlargement of the patent and to further
" other advantages for the country."

Mr. Fenwick, notwithstanding all the conditions of the
agreement were punctually attended by Connecticut, it
seems, did not answer their expectations from him : they
therefore complain of his conduct in a letter to lord Say
and Seal, on the subject.

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Old record of THE general assembly of Connecticut address a letter to the right honorable viscount P. 9, 10, 11. Say and Seal, dated June 7th, 1661.

In this they mention, "The encouragements their fathers and some of their yet surviving associates received, *from him*, to transplant themselves and families into these inland parts of this vast wild wilderness."---They express their assurance of his patronage and favor---complain of Mr. Fenwick's treatment, and of the price of one thousand six hundred pounds given to him to purchase the jurisdiction power and authority he had engaged to them.---They pray his consideration of their address to the king, for a patent for the premises and the continuance of privileges and immunities---request his countenance in their enterprise,---his advice to their agent, John Winthrop, Esq; respecting their petition to the king's majesty for a patent---trust his helpfulness to bring to pass their desires, &c.

His lordship's answer is address'd in the manner following.

No. III.

For my loving friend, Mr. John Winthrop, living in Coleman's-Street, at one Mrs. Whiting's house, near the church.

" Mr. WINTHROP,

" I Received your letter by Mr. Richards, and I would have been glad to have had an opportunity of being at London myself, to have done you and my good friends in New-England, the best service I could; but my weakness hath been such, and my old disease of the gout falling upon me, I did desire leave not to come up this winter, but I have wrote to the earl of Manchester, lord Chamberlain of his majesty's household, to give you the best assistance he may; and indeed he is a noble, and a worthy lord, and one that loves those that are godly.-----And he and I did join together, that our godly friends of New-England might enjoy their just rights and liberties; and this colonel Crowne, who, I hear, is still in London, can fully inform you.

" Con-

" Concerning that of *Connecticut*, I am not able to remember all the particulars ; but I have written to my lord Chamberlain, that when you shall attend him, (which I think will be best for you to do, and therefore I have inclosed a letter to him, in yours) that you may deliver it, and I have desired him to acquaint you where you may speak with Mr. Jesup, who, *when we had the patent*, was our clerk, and he, I believe, is able to inform you best about it, and I have desired my Lord to wish him so to do.---I do think he is now in London.---My love remembered unto you, I shall remain,

your very loving friend,

December 11, 1661.

W. SAY and SEAL."

No. IV.

Old record of The general court, at Hartford upon *Connecticut* in New-England, petition the high P. 12, 13. and mighty prince CHARLES the second humbly shewing,

1661. " **T**HAT whereas your petitioners have not had for many years past, since their possession and inhabiting these western and inland parts of this wilderness, any opportunity, by reason of the calamities of the late times, to seek for, and obtain such grants and letters patents from your excellent majesty their sovereign lord and king, as might assure them of such liberties and privileges, and sufficient powers, as might encourage them to go on through all difficulties, hazards and expences, in so great a work of plantation, in a place so remote from the christian world ; and a desert so difficultly subdued in a way, improveable for subsistence but by great cost and labour, with much patience and care.

" And whereas besides the great charge that hath been expended by our fathers and some of their associates yet surviving, about the purchase, building and fortifying, and other matters of culturing and improving, to a condition of safety and subsistence, in the places of our present abode among the heathen, whereby there is a considerable and real addition, to the honour and enlargement of his majesty's dominion, by the sole disbursements of his majesty's subjects there, of their own proper estates, they have laid out a very great sum for the purchasing a jurisdiction right of

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of Mr. George Fenwick, which they were given to understand was derived from true royal authority, by letters patent certain lords and gentlemen therein nominated, a copy whereof was produced before the commissioners of the colonies, and approved by them as appears by their records, a copy whereof is ready to be presented at your majesty's command, though, either by fire at a house where it had been some time kept, or some other accident, is now lost, with which your poor subjects were rather willing to have contented themselves, than to seek for power or privilege, from any other than their lawful prince and sovereign.

"May it therefore please your most excellent and gracious majesty, to confer upon your humble petitioners, who unanimously do implore your highness's favour and grace therein, those liberties, rights and authorities and privileges, which were granted by the aforementioned letters patent, to certain lords and gentlemen so purchased as aforesaid, or which were enjoyed from those letters patent, granted to the Massachusetts plantation, by our fathers and some of us yet surviving, when there in our beginning inhabiting, and upon which those large encouragements, liberties and privileges; so great a transplantation from our dear England was undertaken, and supposed, to be yet our inheritance, until the running of that western line, the bounded limits of those letters patent, did since our removal thence, determine our lot to be fallen without the limits of that so bounded authority.

"May it please your majesty graciously to bestow upon your humble supplicants, such royal munificence, according to the tenor of a draft or instrument, which is ready here to be tendered at your gracious order.

"And whereas besides those monies and other disbursements as aforesaid, in prosecution of this wilderness work, your poor petitioners were forced to maintain a war against one nation of the heathen, that did much interrupt the beginnings of your servants, by many bloody and hostile acts, whereby divers of our dear countrymen were treacherously destroyed, and have also been ever since, and are still, at much charge in keeping such a correspondence of
peace

peace and amity with divers sorts of the heathen nations, that are round about our plantations thus far extent into the bowels of the country, besides the maintenance of all publick charges for church and civil affairs, which are very great in respect of our great poverty.

" May it please your most excellent majesty, out of your princely wisdom, to grant such an immunity from customs, as may encourage the merchants to supply our necessities in such commodities as may be wanting here, for which we have neither silver nor gold to pay, but the supply in that kind may enable, in due time, to search the bowels of the earth for some gold minerals, whereof there seems to be a fair probability, or produce some such staple commodities, as may in future time appear to be good effects of your majesty's goodness and bounty : if your poor colony may find this gracious acceptance with your majesty as to grant their humble desire, whereby they may be encouraged to go on cheerfully and strenuously in their plantation business, in hope of a comfortable settlement for themselves and their posterity, that under your royal protection they may prosper in this desert ; they shall, as in their acknowledged duty, ever pray for your great tranquility and perpetual happiness ; and humbly craving leave they subscribe themselves your majesty's loyal subjects and servants the general court for the colony of Connecticut in New-England,---per their order signed

DANIEL CLARK, SECRETARY."

Abstract of the charter of Connecticut granted by king Charles II. upon the petition above.

No. V.

April 20. 1662. CHARLES the second by the grace of God KING of England, Scotland, France and Ireland defender of the faith, &c. To all to whom these presents shall come, GREETING.

Whereas we have been informed by the humble petition of our trusty and well-beloved John Winthrop, John Mason, Samuel Wyllys, &c. being persons principally interested in our colony or plantation of Connecticut in New-England, that the same colony, or the greatest part thereof

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was purchased and obtained for great and valuable considerations ; and some other part thereof gained by conquest, and with much difficulty, and at the only endeavours, expence, and charges of them and their associates, and those under whom they claim, subdued and improved, and thereby become a considerable enlargement and addition of our dominions and interest there.

NOW KNOW YE, that in consideration thereof, and in regard the said colony is remote from other the English plantations,---and to the end affairs and business which shall from time to time happen, or arise concerning the same may be duly ordered and managed, We have tho't fit, and at the humble petition of the persons aforesaid, are graciously pleased to create and make them a body politic and corporate, &c.---We do *ordain, constitute and declare*, that they the said John Winthrop, John Mason, &c. and all such others as now are or shall hereafter be admitted and made free of the company of our colony of Connecticut in America, shall from time to time, and for ever hereafter be one body corporate and politic in fact and name, by the name of GOVERNOR AND COMPANY of the English COLONY of CONNECTICUT in New-England in America ; and that by the same name they and their successors may have perpetual succession :---Shall be capable, in law, to plead and be impleaded, to defend and be defended in all suits, actions and things of what kind soever :---To have, possess and purchase lands, goods or chattles, and the same to lease, aliene, sell, &c.

We appoint the aforesaid John Winthrop to be the first and present governor of the said company, and John Mason to be the deputy governor, &c.

“ And know ye further that we, of our abundant grace, certain knowlege and meer motion, have given, granted and confirmed, and by these presents, for us, our heirs, and successors, do give, grant and confirm, unto the said governor and company, and their successors, all that part of our dominions in New-England, in America, bounden on the east by Narraganset river, commonly called Narraganset bay, where the said river falleth into the sea ; and on the

north by the line of the Massachusetts plantation, and on the south by the sea ; and in longitude as the line of the Massachusetts colony, running from east to west, that is to say, from the said Narraganset bay on the east, to the south sea, on the west part, with the islands thereunto adjoining, &c.

“ And lastly, we do for us, our heirs and successors, grant to the said governor and company, and their successors, by these presents, that these our letters patent shall be firm, good, and effectual in the law, to all intents, constructions, and purposes whatsoever, according to our true intent and meaning herein before declared, as shall be construed, reputed, and adjudged most favorable on the behalf, and for the best benefit and behoof of the said governor and company, and their successors, although express mention of the true yearly value, or certainty of the premises, or of any of them, or of any other gifts or grants by us, or by any of our progenitors, or predecessors, heretofore made to the said governor and company of the English colony of Connecticut, in New-England, in America, in these presents is not made ; or any statute, act, ordinance, provision, proclamation, or restriction heretofore had, made, enacted, ordained or provided, or any other matter, cause, or thing whatsoever, to the contrary thereof in any wise, notwithstanding.

“ IN WITNESS, &c. the three and twentieth day of April, in the fourteenth of our Reign.

“ *By writ of privy seal,* HOWARD,”

At a general assembly, at Hartford October 9th, 1662, “ the charter was publickly read, in the audience of the “ freemen, and declared to belong to them and their successors.” A committee was appointed to go to New-Haven, and treat with that colony respecting their union and incorporation with Connecticut. New-Haven declined an union. This produced the following resolution of the general assembly of Connecticut.

No. VI.

August 19, 1663. “ **T**HIS court doth nominate and appoint “ the deputy governor, Mr. Wylls,

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" Mr. Daniel Clark, and John Allyn, or any three or two
 " of them a committee to treat with our honored friends
 " of New-Haven, Milford, Branford and Guilford, about
 " settling their union and incorporation with this colony
 " of Connecticut, and they are impowered to act accor-
 " ding to the instructions given to the committee sent to
 " New-Haven in March last : And in case they cannot
 " effect a union they are hereby authorized publickly to
 " declare unto them that this assembly cannot well resent
 " their proceeding in civil government as a distinct jurif-
 " diction being included within the charter granted to
 " Connecticut corporation : And likewise they are pub-
 " lickly to declare that this assembly doth desire and can-
 " not but expect that the inhabitants of New-Haven,
 " Milford, Branford, Guilford, and Stamford do yield
 " subjection to the government here established according
 " to the tenor of our charter, which is publickly to be
 " read in New-Haven."

New-Haven remonstrated against the proceedings of
 Connecticut, urged that there was no one line or letter in
 the patent expressing his majesty's pleasure, that they should
 be taken in under the government of Connecticut, and
 that their former being as a distinct jurisdiction should
 cease. They say, " If the line of your patent doth cir-
 " cumscribe this colony, by your contrivement, without
 " our cognizance, or consent, we have, and must still testi-
 " fy against it," &c.---Letter to Connecticut May 6, 1663.

They made their appeal to the king, to declare whether
 it was his royal intention, to include them within the char-
 ter of Connecticut or not.

The friends and agents of New-Haven, in England,
 were of opinion that it was best for them to unite with
 Connecticut, under the same government ; and upon a
 conference with Mr. Winthrop, and upon his engage-
 ment, that the colony of New-Haven should not be injur-
 ed and disturbed in their just rights, they thought it ad-
 viseable not to prosecute the appeal.

Governor Winthrop wrote to the colony on the subject.

Governor

No. VII.

Governor Wintrop's letter to Connecticut, addressed thus, For major John Mason, deputy governor of Connecticut colony, and the rest of the court there, at Hartford.

GENTLEMEN,

I AM informed by some gentlemen who are authorized to seek remedy here, That since you had the late patent, there hath been injury done to the government of New-Haven, and in particular at Guilford and Stamford, in admitting of several of the inhabitants there unto freedom with you, and appointing officers, which hath caused divisions in the said towns, which may prove of dangerous consequence, if not timely prevented; tho' I do hope the rise of it is from misunderstanding, and not in design of prejudice to that colony, for whom I gave assurance to their friends, that their rights and interests should not be disquieted or prejudiced by the patent, but if both governments would, with unanimous agreement, unite in one, their friends judged it for advantage to both; and further I must let you know, that testimony here doth affirm, that I gave assurance before authority, that it was not intended to meddle with any town or plantation that was settled under any other government, had it been any otherwise intended or declared, it had been injurious in taking out the patent, not to have inserted a proportionable number of their names in it.---Now upon the whole, having had serious conference with their friends, authorized by them, and with others, who are friends to both, to prevent a tedious and chargeable trial, and uncertain event here, I promised them, to give you speedily this representation, how far you are engaged, if any injury have been done, by admitting of freemen, or appointing officers, or any other unjust intermeddling with New-Haven colony, in one kind or other, without the approbation of the government; that it be forthwith recalled, and that for the future there will be no imposing in any kind upon them, nor admitting of any members without mutual consent, but that all things be acted as loving neighbouring colonies, as before such patent granted, and unto this I judge
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you are obliged, I having engaged to their agents here, that this will be by you performed, and they have thereupon foreborne to give you or me any trouble ; but they do not doubt, but upon future consideration, there may be such a right understanding between both governments, that an union and friendly joining may be established, to the satisfaction of all, which at my arrival, I shall also endeavour (God willing) to promote ; not having more at present in this case, I rest,

Your humble servant,

JOHN WINTHROP,

New-Haven drew up, what they called, a *state of their case*, which contains a compendious history of that colony.

It is too long to be inserted in this tract. The sum of the argument is, That New-Haven colony settled on the lands within their jurisdiction, with the consent of Connecticut :

--- That by voluntary compact they formed into a distinct commonwealth, and had buried great estates in settling and improving the lands under their jurisdiction without any help or assistance from Connecticut :---

That they had been owned as a distinct government by Connecticut and all the New-England colonies, by his majesty and his ministry, for many years :--- Had been allowed to exercise all acts of government as fully as any colony whatsoever :

--- That they had been admitted as a distinct colony to join with the Massachusetts, New-Plimouth and Connecticut, in a most *solemn confederation*, by which the said colonies mutually bound themselves to preserve unto each colony its entire jurisdiction, within itself, and to avoid the *putting of two into one* by any act of their own without the consent of the commissioners from the four united colonies, &c.

For these and the like reasons they insisted that it was unreasonable that they should be subject to Connecticut, and that it could not be his majesty's design to include them within their patent.--- However, on the report of the arrival of his majesty's commissioners in Boston, they began to think seriously of uniting with Connecticut. Their friends at Boston gave them early intelligence of the extraordinary powers vested in them, and of the high and arbitrary manner in which they conducted matters ; and

advised

advised New-Haven to join with Connecticut and stand with
 Records of them for the liberties granted in their patent.
 New-Haven They urged that it was necessary for the com-
 Aug. 11. 1664 mon safety of the country that they and Connecti-
 cut should unite and stand together, to maintain their
 patent rights and privileges.

At a general court August 11th, 1664, governor Leet
 communicated this intelligence to the court, and acquaint-
 ed them, that the governor and magistrates had wrote to
 the gentlemen at Hartford, " That if Connecticut would
 " come and assert their claim to them in the king's au-
 " thority, and would secure what at any time they had
 " propounded to them, and would engage to stand to
 " uphold the liberties of their patent, they would call the
 " general court together that they may consider of it, and
 " be ready to give them an answer; and said for their
 " parts they did not know but they might bow before it.
 The court resolved, " That if they of Connecticut come
 " and make a claim upon us in his majesty's name, and
 " by virtue of their charter, then we shall submit to them
 " until the commissioners of the colonies do meet."--- Thus
 were matters circumstanced when his majesty's commisi-
 oners arrived; and it seems that New-Haven never made
 any appearance before them either at Hartford or New-
 York, and that the commissioners never visited, or took
 any manner of notice of them.

No. VIII.

*Commission of colonel Nicolls, Sir Robert Carr, knight, and
 others for the settlement of boundaries, &c.*

CHARLES R.

April 26. " CHARLES the second by the grace of God
 1664. king of England, Scotland, France and Ire-
 land, defender of the faith, &c.

To all to whom these presents shall come, Greeting.

Whereas we have received several addressees from our
 subjects of several colonies of New-England, all full of
 duty and affection, and expressions of loyalty and allegi-
 ance to us, with their humble desires to us, that we would
 renew their several charters, and receive them into our
 favorable opinion and protection :--- And several of our
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colonies there and other our loving subjects, have likewise complained of differences and disputes arisen upon the limits and bounds of their several charters and jurisdictions, whereby unneighbourly and unbrotherly contentions have and may arise, to the damage and discredit of the English interest; and that all our good subjects residing there and being planters within the several colonies do not enjoy the liberties and privileges granted unto them by our several charters, upon *confidence and assurance of which they transported themselves and their estates into those parts* :---And we having received some addresses from the great men and natives of those countries, in which they complain of breach of faith, and acts of violence and injustice, which they have been forced to undergo from our subjects, whereby not only our government is traduced, but the reputation and credit of the christian religion bro't into prejudice and reproach, with the gentiles and inhabitants of those countries, who know not God, the reduction of whom to the true knowledge and fear of God is the most worthy and glorious end of these plantations. ---Upon all which motives and as an evidence and manifestation of our fatherly affection towards all our subjects in those several colonies of New-England, (that is to say,) of the Massachusetts, Connecticut, New-Plymouth, Rhode-Island, and Providence plantations, and all other plantations which are in that tract of land known under the appellation of New-England.---And to the end that we may be truly informed of the state and condition of our good subjects there, that so we may the better know how to contribute to the further improvement of their happiness and prosperity.

Know ye therefore, That we reposing especial trust and confidence in the fidelity, wisdom, and circumspection of our trusty and well-beloved colonel Richard Nicolls, Sir Robert Carr, knight, George Cartwright, Esq; and Samuel Marverick, Esq; of our special grace, certain knowledge and mere motion, have made, ordained, constituted and appointed, and do by these presents make, ordain, constitute and appoint the said colonel Richard Nicolls, Sir Robert Carr, knight, George Cartwright, and Samuel Marverick,

Marverick, Esqrs; our commissioners ; and do hereby give and grant unto them or any three or two of them, or of the survivors of them, (of whom we will the said colonel Richard Nicolls, during his life shall be always one, and upon equal division of opinions, to have the casting and decisive voice,) in our name, to visit all and every the several colonies aforesaid, and also full power to hear and receive; and to examine and determine all complaints and appeals in all causes and matters as well military as criminal and civil, and proceed in all things for the providing for and settling the peace and security of the said country according to their good and sound discretions, and to such instructions as they or the survivors of them have, or shall from time to time receive from us in that behalf, and from time to time as they shall find expedient, to certify us or our privy council of their actings or proceedings touching the premises, and for the doing thereof, or any other matter or thing relating thereunto, these presents, or the enrolment thereof shall be unto them, and every of them a sufficient warrant and discharge in that behalf. In witness whereof we have caused these our letters to be made patents. Given at the court at Whitehall the 26th day of April, 1664, and in the sixteenth year of our reign. BARKER."

No. IX.

His majesty's gracious letter to the governor and company of Connecticut, accompanying the commission, dated April 23d, 1664.

CHARLES R.

"**T**RUSTY and well-beloved, we greet you well, having according to the resolution we declared to Mr. John Winthrop at the time when we renewed your charter, now sent these persons of known abilities and affections to us, that is to say, Colonel Richard Nicolls, Sir Robert Carr, knight, George Cartwright, Esq; and Samuel Maverick, Esq; our commissioners, to visit those our several colonies and plantations in New-England, to the end that we may be the better informed of the state and wellfare of our good subjects whose prosperity is very dear to us.---We can make no question but that they shall find that reception from you which may testify your respect to

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us from whom they are sent for your good.--- We need not tell you how careful we are of your liberties and privileges, whether ecclesiastical or civil, which we will not suffer to be violated in the least degree; and that they may not be is the principal business of our said commissioners, as likewise to take care that the bounds and jurisdictions of our several colonies there may be clearly agreed upon; that every one may enjoy what of right belongeth unto them, without strife or contention; and especially that the natives of that country who are willing to live peaceably and neighbourly with our English subjects, may receive such justice and civil treatment from them, as may make them the more in love with their religion and manners; so not doubting of your full compliance and submission to our desire, we bid you farewell. Given at our court at Whitehall, the 23d day of April, 1664, in the 16th year of our reign. By his majesty's command.

HENRY BENNITE.

No. X.

Determination of his majesty's commissioners respecting the boundaries of his royal highness the duke of York's patent and the colony of Connecticut.

Nov. 30. 1664. **B**Y virtue of his majesty's commission we have heard the differences about the bounds of the patents granted to his royal highness the duke of York, and his majesty's colony of Connecticut--- and having deliberately considered all the reasons alledged by Mr. Allyn secretary, Mr. Gold, Mr. Richards and Capt. Winthrop, appointed by the assembly held at Hartford, the 13th day of October 1664, to accompany John Winthrop, Esq; governor of his majesty's colony of Connecticut, to New-York, and by Mr. Howell and Capt. Young of Long-Island, why the said Long-Island should be under the government of Connecticut; which are too long here to be recited. We do declare and order, That the southern bounds of his majesty's colony of Connecticut, is the sea; and that Long-Island is to be under the government of his royal highness the duke of York; as is expressed by plain words in the said patents respectively.

ly. And also by virtue of his majesty's commission and by the consent of both the governor and the gentlemen above-named. We also order and declare, That the creek or river called Momoronock, which is reputed to be about twelve miles to the east of West-Chester, and a line drawn from the east point or side, where the fresh water falls into the salt, at high water mark, north-north-west, to the line of the Massachusetts, be the western bounds of the said colony of Connecticut, and the plantations lying westwards of that creek, and line so drawn to be under his royal highness's government; and all plantations lying eastward of that creek and line to be under the government of Connecticut. Given under our hands at Fort James, in New-York, on Mannhattans Island, this 30th day of November, 1664.

RICHARD NICOLLS,

GEORGE CARTWRIGHT.

SAMUEL MAVERICK.

We underwritten, on behalf of the colony of Connecticut, have assented unto this determination of his majesty's commissioners, in relation to the bounds and limits of his royal highness the duke's patent, and the patent of Connecticut.

Nov. 30. 1664.

JOHN WINTHROP,

MATTHEW ALLYN,

NATHAN GOLD,

JAMES RICHARDS,

JOHN WINTHROP."

After the determination of his majesty's commissioners, relative to the boundaries of the colony of Connecticut, the general court of New-Haven passed the following resolve, viz.

Dec. 13, 1664. **T**HAT "in testimony of our loyalty to the king's majesty, when an authentic copy of the determination of his majesty's commissioners is published, to be recorded with us, if thereby it shall appear, to our committee, that we are, by his majesty's authority, now put under Connecticut patent, we shall submit; as from a necessity brought upon us, by their means of Connecticut aforesaid; but with (*a salvo jure*) of our former rights and claim as a people, who have not been heard in point of plea." They

They appointed the members of their general court, with the elders of the jurisdiction, a committee to treat with Connecticut and consummate an union.

This letter was written to Connecticut on the subject,

No XI.

HONORED GENTLEMEN,

"WE have been silent hitherto, as to the making of any grievance known unto the king's commissioners, notwithstanding what may be with us of such nature, from the several transactions that have been among us, are desirous so to continue the managing of these affairs in ways consistent with the ancient confederation of the united colonies, choosing rather to suffer, than to begin any motion hazardous to New-England settlements; in pursuance whereof (according to our promise to your gentlemen, sent lately to demand our submission, tho' in a divided if not, dividing way, within our towns, severally seeking to bring us under the government of yourselves already settled, wherein we have had no hand to settle the same, and before we had cleared to our conviction the certain limits of your charter, which may justly increase the scruple of too much haste, in that and former actings upon us) the generality of our undivided people have orderly met this 13th of tenth month (64) and by the vote endorsed, have prepared for this answer to be given of our submission, which being done by us, then for the accommodation of matters betwixt us in an amicable way, by a committee empowered to issue with you on their behalf, and in the behalf of all concerned, according to instructions given to the said committee.---We never did, nor even do intend to damnify your moral Rights or just Privileges, consistent with our like honest enjoyments, and we would hope that you have no further step towards us, not to violate our government interest, but to accommodate us with that we shall desire, and the patent bear, as hath been often said you would do; and surely you have the more reason to be full with us herein, seeing that your success for patent bounds with those gentlemen now obtained, seems to be debtor unto our silence before them, when as you thus by
single

single application and audience issued that matter: you thus performing to satisfaction, we may still rest silent, and according to profession, by a studious and cordial endeavour with us to advance the interest of Christ in this wilderness, and by the Lord's blessing thereupon, love and union between us may be greatly confirmed, and all our comforts enlarged, which is the earnest prayer of,

Gentlemen, *Your loving friends and neighbours the committee, appointed by the freemen and inhabitants of New-Haven colony, now assembled,*

New-Haven, Dec. 14, 1664. JAMES BISHOP, Secretary.
No. XII.

Answer of Connecticut to New-Haven.

Honored Gentlemen, Hartford, December 21, 1664.

Dec. 21. 1664. **W**E have received yours, dated the 14th of this instant, signed by James Bishop, &c. wherein you are pleased to mention your silence hitherto, as to the making any grievance known to his majesty's commissioners, notwithstanding what may be with you, &c.---we can say the same, tho' we had fair opportunities to present any thing of that nature.---As for your desire to manage affairs consistent with the confederation, the present motion will, we hope, upon a candid review, not appear any ways dissonant therefrom; for besides the provision made in one of the articles of confederation for two colonies uniting in one, there was special provision as you well know, made at the last session of the commissioners to that purpose, conjoined with pathetical advice and council, to an amicable union.---Our too much forwardness, with New-Haven, &c. is not so clear, *seeing those plantations you inhabit are much about the center of our patent,* which our *charter limits*, as also the inclosed determination of his majesty's honorable commissioners, will, to your conviction, be apparent; that our success for patent bounds with the king's commissioners is debtor to your silence, seems to us strange, when your non-compliance was so abundantly known to those gentlemen, yea, the news of your motions, when Mr. Joseph Allyn was last with you, was at New-York, before our governor's departure thence; *notwith-*

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notwithstanding your silence, and yet so good an *issue obtained*, we desire such reflections may be buried in perpetual silence, which only yourselves necessitating thereunto, shall revive them, being willing to pursue truth and peace as much as may be with all men, especially with our dear brethren in the fellowship of the gospel, and fellow-members of the same civil corporation, accommodated with so many choice privileges, which we are willing, after all is prepared to your hands, to confer upon you equal with ourselves, which we wish may at last produce the long desired effect of your free and cordial closure with us; not attributing any necessity imposed by us, further than the situation of those plantations in *the heart of our colony*, and therein the peace of posterity in these parts of the country is necessarily included, and that after so long liberty to present your plea when you have seen meet.---Gentlemen, we desire a full answer as speedily as may be, whether those lately impowered, accept to govern according to their commission, if not, other meet persons to govern may by us be impowered in their room; thus desiring the Lord to unite our hearts and spirits in ways well pleasing in his sight, which is the prayer of your very loving friends, the council of the colony of Connecticut.

Signed by their order, by me
JOHN ALLYN, Secretary."

No. XIII.

The last reply of the colony of New-Haven to Connecticut.
Honored Gentlemen,

New-Haven, January 5, 1664-5.
January " W HEREAS by yours, dated December 21,
5, 1665. 1664, you please to say, that you did the

same as we, not making any grievances known to the commissioners, &c. unto that, may be returned, that you had not the same cause so to do from any pretence of injury, by our intermeddling with your colony or government interest, unto which we refer that passage for our expressing desires to manage all our matters in confederacy with the confederation, we hope you will not blame us; how dissonant or consonant your actings with us have been, we leave to the confederation to judge, as their records may

may show---that article, which allows two colonies to join, doth also, with others, assert the justness of each colony's distinct rights, until joined to mutual satisfaction, and the provision made in such case the last session, we gainsay not, when the union is so compleated, and a new settlement of the confederation, by the respective general courts, accomplished---their patherical advice for an amicable union, we wish may be so attended---in order thereunto, we gave you notice of a committee prepared to treat with you for such an accommodation, unto which you gave us no answer, but instead thereof, send forth your edict from authority upon us, before our conviction for submission was declared to you---the argument from our intermixt situation, is the same now as it was before our confederating, and even since, and affords no more ground now to disannul the government than before---we might marvel at your *strange*, why we should think your success should be debtor to our silence, and that because the news of our non-compliance was with the commissioners, as if the mere news of such a thing contained the strength of all we had to say or plead---Gentlemen, we intreat you to consider, that there is more in it than so, yea, that still we have to alledge things of weight, and know where and how, if we chose not rather to abate and suffer, than by striving to hazard the hurting yourselves or the common cause. We scope not at reflections, but conviction and conscience satisfaction, that so brethren in the fellowship of the gospel might come to a cordial and regular closure, and so to walk together in love and peace, to advance Christ his interest among them, which is all our design. But how those high and holy ends are like so to be promoted between us, without a treaty for accommodation we have cause to doubt; yet that we may not fail in the least to perform what ever we have said, we now signify, That having seen the copy of his majesty's commissioners determination (deciding the bounds betwixt his highness the duke of York, and Connecticut charter) we do declare submission thereunto according to the true intent of our vote, unto which we refer you. As to that part of yours concerning

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our magistrates and officers acceptance, their answer is, That they having been chosen by the people here to such trust and sworn thereunto, for the year ensuing, and until new be orderly chosen, and being again desired to continue that trust, they shall go on in due observance thereof according to the declaration left with us by Mr. John Allyn and Mr. Samuel Sherman, bearing date November 19th, 1664; in hopes to find that in a loving treaty for accommodating matters to the ends professed by you; unto which our committee stands ready to attend, upon notice from you; that so truth and peace may be maintained. So shall we not give you further trouble, but remain,

Gentlemen, your very loving friends and neighbours,
the committee appointed by the freemen and inhabitants of New-Haven colony,

Signed per their order, per me,

JAMES BISHOP, *Secretary.*"

An union of the two colonies was soon amicably effected. The general Assembly of Connecticut, resolved,

That, Mr. William Leet, Mr. William Jones,
April 20, 1665. Mr. Matthew Gilbert, Mr. Jasper Crane, Mr.
Alexander Briant, Mr. Laws and Robert Treat,

should be nominated, at the election for magistrates: and that all past uncomfortable actings at New-Haven, respecting Connecticut, should be buried in perpetual oblivion.

At the next election, May 11, 1665, Mr. William Leet, and Mr. William Jones, the late governor and deputy governor of New-Haven colony, Mr. Benjamin Fenn, and Mr. Jasper Crane, were chosen magistrates for Connecticut.

A P P E N D I X.

P A R T II.

Extracts from history and ancient records, relating to the claims of the Dutch in New-England.

No. XIV.

Historical extracts.

THE Dutch writers contend, that *Hudson* was sent out
 “ by the *East-India Company* in 1609, to discover a
 “ north-west passage to *China*; and that hav-
 “ ing first discovered *Delaware bay*, he came
 “ hither and penetrated up *Hudson’s river*, as
 “ far north as the latitude of 43°. It is said
 “ however, that there was a sale, and that the English ob-
 “ jected to it, though they for some time neglected to op-
 “ pose the Dutch settlement of the country”.

“ The States General granted a patent to sun-
 Dutch “ dry merchants, for an exclusive trade on the
 grants “ North-River.”
 1614. &
 1621. “ Made a grant of the country, in 1621, to the
 “ *West-India Company*.”

MR. SMITH in his history of *New-Jersey* says, “ The
 “ claim the Dutch set up, was under colour of a discovery
 “ made, in the year 1609, by *Henry Hudson*, an English-
 “ man.—The Dutch pretended to have purchased the
 “ chart he made of the American coast; and having ob-
 “ tained a patent from the States, in 1614, to trade to
 “ *New-England*, settled at *New-York*, which they called
 “ *New-Netherland*; and kept possession until *Sir Samuel*
 “ *Argole*, governor of *Virginia*, disputed their title; al-
 “ ledging that the country having been discovered by an
 “ Englishman in right of his master, he could not suffer
 “ it to be alienated from the crown, without the king’s
 “ consent: he therefore compelled the Dutch colony to
 “ submit to him, and to hold it under the English:
 “ But sometime after, a new governor coming from *Am-*
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"sterdam", they not only neglected to pay their usual acknowledgment to the governor of Virginia, but in the year 1623, fortified their colony.

"The proceedings of the Dutch having been represented to king Charles the first, his ambassadors at the Hague, made such pressing instances to the states, that they disowned having given any commission for what the Dutch had done, and laid the blame on their East-India company. Upon this, king Charles gave a commission to Sir George Calvert, lately made Lord Baltimore, to possess and plant that part of America, now called Maryland; and to Sir Edmund Loeyden, of Ploymden to plant the northern parts towards New-England. The Dutch afraid of the power of the English, were willing to compound matters a second time; offering to leave their plantations in consideration of £. 2500, to be paid them for the charges they had been at. But soon after, king Charles being involved in his troubles, was hindered from supporting his colonies, they therefore fell from their first proposals." P. 19, 20, 21.

DOUGLAS says, "Capt. Henry Hudson, anno 1608, discovered the mouth of Hudson's river in north latitude 40d. 30m. upon his own account, as he imagined, and sold it, or rather imparted the discovery to the Dutch. The Dutch made some settlements there, but were drove off by Sir Samuel Argole, governor of a second Virginia company, anno 1618, because within the limits of that company's grant; but anno 1620, king James gave the Dutch some liberty of refreshment for their ships bound to Brazils, which they afterwards, in the times of the civil wars and confusions in England, improved to the settling of a colony there." Vol. I. P. 204, 205.

"NEW-YORK and New-Jerseys were first traded to; and some settlements made there, by the English and Dutch: The Dutch placed a governor there, of which the court of England complained to the States of Holland:

R

land:

* This new governor seems to have been Walter Van Twilly, who arrived at New-York, in June 1629. Smith's History of New-York, p. 3.

land : The States disowned it, and said, " that it was only
 " a private undertaking of an Amsterdam West-India
 " company, and king James I. commissioned Edward
 " Langdon as governor, and called the country New-
 " Albion. The Dutch submitted to the English govern-
 " ment. During the civil troubles in England, in the ad-
 " ministrations of king Charles I. and of the republican
 " party, the Dutch again established a government there;
 " till it was reduced by England 1664." D. V. II. p. 222.

Governor Stuyvesant, in a letter to the West-India com-
 pany, June 25, 1660, writes thus, " The right to both
 " rivers, by purchase and possession is our own without
 " dispute. We apprehend, that they, our more power-
 " ful neighbours lay their claims under a royal patent,
 " which we are unable hitherto to do in your name*."

July 21, 1661, he writes, " Lord Sterling is said
 History of N. York, p. 8, 9. " to solicit a confirmation of his right to all
 " Long-Island, and importunes the present
 " king to confirm the grant made by his royal
 " father, which is affirmed to be already obtained. But
 " more probable, and material, is the advice from Mary-
 " land, that lord Baltimore's patent, which contains the
 " south part of South river, is confirmed by the king, and
 " published in print.---We have advice from England,
 " that there is an invasion intended against these parts,---
 " and for that purpose, they desire three or four frigates,
 " persuading the king, that the company possessed and
 " held this country under an unlawful title, having only
 " obtained of king James leave for a watering place on
 " Staten Island, in 1623."

COLONEL

* Mr. Smith remarks, If we should argue from this letter that the
 West-India company had no grants of the New-Netherlands from the
 States General, as some suppose, we discredit De Laet, the Dutch
 writers, and even Stuyvesant, &c. But is it not very strange indeed
 if there ever were any grants made to the Dutch of this country,
 that they never were obtained, and exhibited in the controversy be-
 tween the Dutch and English, which subsisted for more than twenty
 years? Equally strange is it also, that all the historians who have
 written concerning them have given no account of the country which
 they described, or of any limits or boundaries whatsoever expressed in
 them.

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History
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COLONEL NICOLLS in his letter to the Dutch governor, dated August 31st. 1664, writes, "I think it fit to let you know, that his majesty of GREAT-BRITAIN, whose right and title to these parts of America is unquestionable, well knowing how much it derogates from his crown and dignity, to suffer any foreigners, how near soever they be allied, to usurp a dominion, and without his majesty's royal consent, to inhabit these, or any other of his majesty's territories, hath commanded me in his name, to require a surrender of all such forts, towns, or places of strength, which are now possessed by the Dutch, under your commands; and in his majesty's name, I do demand the town situate on the Island, commonly known by the name of Manhatos, with all the forts thereunto belonging to be rendered unto his majesty's obedience and protection, into my hands."

GOVERNOR Hutchinson certifies us, that "Mr. Winslow, one of the commissioners for Plymouth, discovered the fresh river when the Dutch had neither trading house nor any pretence to a foot of land there:---That those of New-Plimouth had pitched upon a place for a house, in 1632, when it was *vacant*, and in 1633 erected it, although they were threatened by a party of Dutch whom they then found there."---That they "(the Dutch) were constantly in fear of the English:" That their right to any part of the country had never been allowed in England: That "some of the English had said publicly, that their countrymen were fools to suffer the Dutch to live there in the centre," and that "they themselves had no pretence to any certain boundary, and would sometimes challenge the country from Cape Henlopen to Connecticut river, and at other times as far as Cape-Cod."---Hutchinson Vol. I. P. 43, 157, 158 and 184.

Further speaking of the settlement with the Dutch in 1650, by which they were limited to Greenwich, he says, "Indeed the suffering them to extend thus far was mere favor and indulgence, but there had been a good correspondence

"response always kept up between the English colonies and these intruders." Vol. I. P. 85.

EXTRACTS from the records of the united colonies relative to the English and Dutch claims.

No. XV.

Minutes taken from the Dutch records and transmitted by governor Stuyvesant, to the commissioners of the united colonies.

"**A** NNO 1633, June 8th, Jacob Van-Curter then in the Dutch service, by order of the honorable M. H. and M. S. G. &c. bought the lands on Connecticut or Sicaioe river. This purchase was of the commander of Sicanamus, named Nupequash, * the conqueror and subduer of the land, by consent of the right subdued owner of the nation standing by : and that (as the Dutch say) before the English had been upon the river." †

"25th of October 1633, the Dutch protest against William Holmes builder of the Plymouth house, upon the fresh water."

In 1640 the New-Haven adventurers made purchases of large tracts of land on both sides of Delaware bay and river, and began to plant and set up houses, &c. but being interrupted, by the Dutch, the commissioners of the united colonies assert their claim and title.

A declaration

* This seems to have been a Pequot captain. This purchase consisted of about 20 acres of land at Hartford where the Dutch house was erected. It was made a year after the English had pitched upon a place for the Plymouth house, and but little before it was erected. From this trifling purchase the Dutch it seems took occasion to claim all the lands on both sides of Connecticut river.

† Mr. Prince saith, "It seems as if the Plymouth partners had sent divers times up Connecticut river, and traded there, before April 1631, though they set not up a house till now." Governor Bradford, in his account of the entrance of the Plymouth people at Windsor, in 1633, writes, "We did the Dutch no wrong : for we took not a foot of any land they bought ; but went to the place above them, and bought that tract of land, which belonged to the Indians we carried with us, and our friends with whom the Dutch had nothing to do." Prince from Bradford, Part II. Sect. 2. P. 94, 96.

XVI.

A declaration of the commissioners of the united colonies occasioned by the Dutch governor's seizing a ship of Mr. Westerbeuse in New-Haven harbour.

"IF he hath nothing to pretend or alledge, but that New-Haven is part, or within New-Netherlands, the English colonies must and do profess against it, and according to their duty, by all just means, assert the English right both to New-Haven lands and harbour, and to all the English plantations from Cape-Cod, both on the main and on the islands, which are possessed by the English, and, at present, under their government, as anciently granted by the kings of England to their subjects, since purchased, by the English, from the Indians, the true proprietors of the land, and for divers years peaceably possessed and planted by them, without any question or demand by the Dutch or any from them: and shall accordingly expect to be righted both for the injury and affront in 1648. taking a ship out of one of their harbours upon such a challenge, and in title to the place, unjustly claimed without purchase, possession, or any other considerable ground."

No. XVII.

"*Articles of agreement made and concluded at Hartford, upon Sept. 19. Connecticut river, September 19th, 1650, betwixt 1650. the delegates of the honored commissioners of the united English colonies, and the delegates of Peter Stuyvesant, governor general of New-Netherlands.*"

I. "UPON a serious consideration of the differences and grievances propounded by the two English colonies of Connecticut and New-Haven, and the answer made by the honored Dutch governor, Peter Stuyvesant, Esq; according to the trust and power committed to us, as arbitrators or delegates betwixt the said parties, we find that most of the offences or grievances were things done in the time, or by the order and command of Monfr. Kieft the former governor; and that the present honorable governor is not duly prepared to make answer to them; we therefore think meet to respite the full consideration and judgment concerning

cerning them, till the present governor may acquaint the States and West-India company with the particulars, that so due reparation may accordingly be made."

II. The commissioners for New-Haven, complained of several high and hostile injuries which they and others of that jurisdiction have received from, and by order of the aforesaid Monfi. Kieft, in Delaware bay and river, and in their return thence, as by their former propositions and complaints, may more fully appear; and beside the English right claimed by patent, presented and shewed several purchases they have made on both sides the river and bay of Delaware, of several large tracts of lands unto, and somewhat above the Dutch house or fort there, with the consideration given to the said sachems and their companies, for the same acknowledged and cleared by the hands of the Indians, whom they affirm were the true proprietors and testified by many witnesses. They also affirmed, that according to the best of their apprehensions, they have sustained 1000l. damage there, partly by the Sweedish governor, but chiefly by order from Monfi. Kieft.---And therefore required due satisfaction and peaceable possession of the aforesaid lands, to enjoy and improve according to their just rights."

"The Dutch governor, by way of answer affirmed and insisted the title and right to Delaware, or the South river, as they call it, and to the lands there, as belonging to the H. M. States and West-India company, and professed he must protest against any other claim; but is not provided to make any such proof, as in such a treaty might be expected, nor had he commission to treat or conclude any thing therein. Upon consideration whereof, we the said arbitrators or delegates, wanting sufficient light to issue or determine any thing in the premises, are necessitated to leave both parties *in statu quo prius*, to plead and improve their just interests at Delaware, for planting or trading as they shall see cause; only we desire that all proceedings there, as in other places, may be carried on in love and peace, 'till the right may be further considered and justly issued, either in Europe or here, by the two states of England and Holland."

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III. "Concerning the seizing Mr. Westerhouse's ship and goods, about three years since, in New-Haven harbour, upon a claim to the place, the honoured governor, Peter Stuyvesant, Esq; professing that what passed in writing that way, was through error of his secretary, his intent not being to lay any claim to the place, and with all affirming, that he had orders to seize any Dutch ship or vessel in any of the English colonies or harbours, which should trade there, without express licence or commission; we therefore think it meet, that the commissioners of New-Haven, accept and acquiesce in this answer."

"Concerning the bounds and limits betwixt the English united colonies, and the Dutch province of New-Netherlands, we agree as followeth."

I. "That upon Long-Island, a line run from the westernmost part of Oyster-Bay, and so a straight and direct line to the sea, shall be the bounds betwixt the English and the Dutch there, the easterly part to belong to the English, the westernmost part to the Dutch."

II. "The bounds upon the main, to begin at the west side of Greenwich bay being about four miles from Stamford, and so to return a northerly line, 20 miles up into the country, and after, as it shall be agreed, by the two governments of the Dutch and New-Haven, provided the said line, come not within ten miles of Hudson's river. And it is agreed that the Dutch shall not at any time hereafter, build any house or habitation within 6 miles of the said line, the inhabitants of Greenwich, to remain (till further consideration thereof be had) under the government of the Dutch."

III. "The Dutch shall hold and enjoy all the lands in Hartford, that they are actually possessed of, known and set out by certain marks and bounds, and all the remainder of the said land, on both sides Connecticut, to be and remain to the English there."

"And it is agreed, that the aforesaid bounds and limits, both upon the islands and main, shall be observed and kept inviolable both by the English of the united colonies, and all the Dutch nation, without any encroachment or molestation

molestation until a full and final determination be agreed upon in Europe, by mutual consent of the two states of England and Holland."

"And in testimony, of our joint consent to the several foregoing conclusions, we have hereunto set our hands this 19th day of September, Anno Dom. 1650.

SIMON BRADSTREET,
THOMAS PRINCE,
THOMAS WILLETT,
GEORGE BAXTER."

No. XVIII.

Abstract of the declaration against the Dutch.

"THE united English colonies expecting a just and neighbourly correspondence and intercourie from and with the Dutch, living at and about the Manhatoes, which they call New-Netherlands, though the place fall within that part or tract of America, called New-England, lying and being in breadth from 40 to 48 degrees of northerly latitude, which, both in Europe and here, is well known, by ancient *patents* *, to be granted by the kings of England to their subjects to settle and plant upon, have met with a *constant course of opposition, injury, and many hostile affronts.*"

"The English before, or when they began to build, fence and plant in these parts, did generally purchase to themselves, from the Indians the true proprietors, a just right and title to the lands they meant to improve, if they found not the place *vacuum domicilium*"-----

"Letting pass an hostile affront and injury capt. How and his company received from the former governor Kieft, at Long-Island, anno 1640 †, New-Haven upon a due title

* The New England patent, in 1620, the parent to the province of Massachusetts-bay, in 1628, and that to the earl of Warwick in 1630. How clear is the evidence that the first planters of New England understood these ancient grants in the sense which is now contended for, as extending westward to the south sea?

† Captain How and other Englishmen belonging to Connecticut and New-Haven made a purchase of the Indians, before the year 1640, or about that time, of all that tract of land, from the eastern part of Oyster-bay to the western part of a bay, called, at that time, Howe's

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title both by *patent* and *purchase* built, within their own just limits, a small town or village, called Stamford ; but about two years after the said governor Kieft sent men armed to challenge the place as within the Dutch limits and jurisdiction, and did most injuriously cause the prince of Orange his arms to be set up there, which arms were by the English presently removed : The Dutch having never had possession of any part of the place, nor to this day could ever shew any shadow of right to it."

" In the same year, 1640, New-Haven sent men to view and purchase part of Delaware-bay, but with express direction not to meddle with any thing the Dutch or Swedes had right unto. As the English vessels passed by the Manhatoes, the said William Kieft made a protest, but upon information of the order given he was satisfied, and wrote to John Johnson, the Dutch agent at Delaware, to hold correspondence with the English there, (which accordingly he did, at first, and shewed them how far the *Dutch and Swedes claim reached* ; the rest he told them was free for them to purchase, and offered his assistance therein, which after, though kindly accepted, was not entertained ; but the Indians being free, [that is willing] the English agents at several times, from the several proprietors, purchased large tracts of land on both sides of Delaware-bay and river, began to plant and to set up houses for trade within their own limits : But, in anno 1642, without cause or warning given, without shewing any title to the place, or hearing what the English could say for themselves, the said Dutch governor, sent armed vessels and men, seized their goods and carried away their men prisoners, and with such violent haste burnt down their trading houses, that two hours respite, for treaty and consideration could not be obtained, nor so much time as to inventory the goods, taken out of their charge."

" The Dutch for many years together laid particular
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or Holmes's bay, to the middle of the great plain, containing half the breadth of Long-Island to the northward. Kieft, at that time, governor of New-Netherlands caused the English to be seized and imprisoned. This is the hostile affront to which the commissioners have reference,

claim to Connecticut river, by them called the fresh river, with the lands on both sides of it, as by them duly purchased from the Indian proprietors, and did much complain of the English, upon that river, especially Hartford, for usurping and withholding their right in those lands."

"To which the said English returned answer clearing their title and proceedings. But the Dutch governor not therewith satisfied, by letter, dated July 20th, 1643, *filo novo*, and directed to the honoured governor of the Massachusetts, continued his complaints. Whereupon the whole council of that colony considered the Dutch claim, from the Pequots, as themselves presented it, 1649, with the answer returned by the English, at Hartford; and received further light from Mr. Winslow, one of the commissioners for Plimouth, who discovered the said fresh river, when the Dutch had neither trading house, nor any pretence to a foot of land there: and understood that the English within Plimouth patent, and others, the true proprietors of the lands in question, who had been oppressed by the Pequots, but still continued their right, and from them the English at Hartford, purchased a due title: yet offered to refer the whole cause to indifferent arbitrators, either in England, Holland, or here.---

"By a protest in Dutch, dated October 12th, 1647, *filo novo*, he" (the Dutch governor,) "enlarges his claim to all the lands, rivers, streams, &c. from Cape-Henlopen (which may be about Virginia) to Cape-Cod; from which drawing any line to the north, north-west, or west, he wholly takes in, or encroaches far upon, all the united colonies."

No. XIX.

Abstract of a letter from the commissioners of the united colonies to the Dutch governor, September 1st, 1659.

"Much honored Sir,

1659. "WE presume you have heard from your people, of the fort of Aurania, [Albany] that some of our people, the English, have been lately in those parts, upon discovery of some meet places for plantations, within the bounds of the patent of the Massachu-

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setts colony : which from the latitude of 42 degrees and [a half,] or 42 degrees and 33 and a half minutes, and so northerly extends itself from east to west, in longitude, through the main land of America, from the Atlantic ocean to the south or west sea.---And we understand that the government of the Massachusetts have granted liberty to some of their people to erect a plantation in those parts and intend to effect the same, yet without intrenchments upon the Dutch rights.

“ The passage up Hudson’s river would very much accommodate them in their design. We have thought good, in their behalf, to desire liberty of free passage,” &c.

GOVERNOR Hutchinson has this note relative to the lands referred to in the preceding abstract, viz.

“ The Massachusetts, in the year 1659, made a grant of land opposite to fort Aurania, upon Hudson’s river, and a number of the principal merchants in the colony were enterprizing a settlement, &c. which, probably, was laid aside upon the change of affairs in England. The country itself a few years after was recovered from the Dutch and granted to the duke of York, too powerful a proprietor to contend with about bounds.” H. vol. I. p. 159.

No. XX.

Extract from a letter of governor Saltonstall to Mr. agent Dummer, 14th September 1720.

1720. “ **W**HAT aim their lordships may have in directing such plans of these provinces, (for the orders are circular) to be laid before them, at this time, with an account what foreigners have made any settlements within the bounds of them, we may not be able to guess.---But this is certain, that if we may extend our right as far as our charter does our bounds, we shall come athwart our friends at Missisipi, long before we arrive at the western term ; and ’tis as certain that they have none of our leave to settle in our colony.” &c.

No. XXI.

R E M A R K S.

THE authorities and vouchers which have been now recited give abundant evidence, that the Dutch claim

claim to New-England, or to any part of North-America was without any legal foundation : and that their title to any part of the country, was never, at any period, allowed in England. The court of England ever disowned it, and treated them as usurpers. They were not the first discoverers of the country and therefore could not claim it on that footing. They had no grant of it, specifying any particular boundaries, first or last, which any historians have ever been able to certify. A grant for an exclusive trade on Hudson's river in 1614, and a grant to the *West-India* company in 1621, *without any description of the country granted, without the least mention of boundaries*, is all that their ablest historians pretend. A grant to the *West-India* company, observe, not to any corporation, or body of men, in *New-Netherlands*, or in *New-England*. Nay, this grant was so far from warranting the Dutch to settle on the lands at New-Netherlands, and exercise jurisdiction there, distinct from the government of England, that even the States General, who, it is pretended, made the grant, disowned their having ever given orders for any thing of this nature.

As to the Dutch claim to the colony of Connecticut, or to any considerable part of it, by virtue of prior possession or purchase, it appeareth to be equally groundless. Their possession at Hartford was not more than two or three months prior to the possession taken by the English at Windsor, and could be of no significancy, in law, especially as that possession was taken after the country of Connecticut had been repeatedly granted, by the kings of England, to their subjects ; and after the Dutch had been certified of it, and desired not to encroach upon the rights of the English in those parts.

With regard to all that tract from Connecticut river to Byram river they never so much as purchased or possessed a foot of land in any part of it, except the small plat at Hartford.

FURTHER, it appears that the English, of the united colonies, ever considered the right of the Dutch, as confined entirely to the lands which they had purchased and settled.

As to Dr. Smith's declaration, therefore, relative to the Dutch

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Dutch title, to all the lands west of Connecticut river, it is absolutely without any foundation. How would the Dr. laugh at Connecticut should they set up a claim to such a territory, without prior discovery, without patent, without purchase or prior possession, even of any part of it? A gentleman must have a great talent, indeed, at declamation, who can say so much, as the Dr. has said, on this head, with so little foundation.

It is worthy of further remark, that the authorities referred to above, clearly evince, that the first planters considered the New-England patents as extending westward to the south sea. This appears to have been the opinion of the general court of the Massachusetts, and of the commissioners of the united colonies in 1659. It was the opinion of the governor of Connecticut, in 1720, with regard to the charter of this colony. Nay more, it seems to have been the opinion of their lordships, otherwise there would have been no propriety in their enquiry about the settlement of foreigners within our limits, in as much as there appeareth to have been no other ground for it, except the French settlements towards the Mississipi. This sheweth also, that these great men had not imbibed the curious sentiment, that the settlement with the duke of York had barred the western boundary of Connecticut, or precluded them from advancing westward to their original bounds.

In a word, governor Hutchinson has said, on the best ground, that the suffering the Dutch to extend so far as Greenwich, was mere favor and indulgence to *these intruders*. The New-England patent, and the derivative grants, had a western extension to the south sea, included the whole province of New-York, and made an ample conveyance of all that part of it, which had not been settled prior to them.

A P P E N D I X.

P A R T III.

Extracts of ancient patents, of pleas, opinions, agreements and judgments relative to the Narraganset country, originally granted to Connecticut, with copies of several transactions relative to the western lands.

No. XXII.

Abstract of the grant to marquis Hamilton.

April 20.
1635.

THIS INDENTURE, made the two and twentieth day of April, in the eleventh year of the reign of our sovereign lord Charles, &c.---between the council established at Plimouth in the county of Devon, for the planting, &c. of New-England, &c.---and the right honorable James marquis Hamilton witnesseth, &c.---That the said council in performance of an agreement made by and between themselves, &c.---Have given, granted, &c.---and by these presents do give, grant, &c.---unto the said James marquis Hamilton, his heirs and assigns, all that part, purpart and portion of main lands of New-England aforesaid, situate, lying, and beginning at the middle part of the mouth or entrance of the river Connecticut in New-England, and from thence to proceed along the sea coast to the Narragansett's river or harbour there, to be accounted about sixty miles, and so up the western arm of that river to the head thereof, and unto the land northwestward 'till sixty miles be finished, and so to cross overland southwestwards to meet with the end of sixty miles, to be accounted from the mouth of Connecticut up northwest, and also all islands and islets as well embayed as within five leagues distance from the premises, and abutting upon the same or any part or parcel thereof, not otherwise granted to any by special name, all which part, &c.---of lands, &c.---shall from henceforth be called by the name of the county of New-Cambridge."

"To have and to hold, &c. unto the said James marquis Hamilton, his heirs and assigns forever," &c.

N. B. It appears from an attested copy of this deed that it was never signed or sealed by the parties ; nor is there any subscription of witnesses to the original instrument.

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No. XXIII.

*Abstract of Mr. Winthrop's and Mr. Clark's agreement,
April 1663.*

1663. "FIRST, that a river there commonly called and known by the name of Pawcatuck-river, shall be the certain bounds between those two colonies, which said river shall for the future be also called alias Narragance or Narraganset-river.

Secondly, If any part of that purchase of Quinebaug doth lie along upon the east side of the river that goeth down by New-London, within six miles of the said river, that then it shall wholly belong to Connecticut colony, as well as the west, which lieth on the western side of the aforesaid river.

Thirdly, That the proprietors and inhabitants of that land about Mr. Smith's trading house, claimed or purchased by major Atherton, captain Hutchinson, lieutenant Hudson and others, or given unto them by Indians, shall have full liberty to choose to which of those colonies they will belong.

Fourthly, That propriety shall not be altered nor destroyed, but carefully maintained throughout the said colonies."

To the four propositions mentioned the said John Winthrop and John Clark do consent and submit as a full and final issue of all the controversy betwixt us. In witness whereof," &c.

The proprietors and settlers made choice of the government of Connecticut, July 3d, 1663, and were taken under their jurisdiction.

No. XXIV.

UPON the agreement recited above, the charter of Rhode-Island was granted, bounding said colony westward on Pawcatuck-river, which charter ordains, That the same shall be held to them, &c. -- "Any grant, or clause in a late grant, to the governor and company of Connecticut colony in America, to the contrary thereof, in any wise notwithstanding. The aforesaid Pawcatuck river, * having been

* See Hutchinson's Vol. collection of papers, page 412.

been yielded, after much debate, for the fixed and certain bounds, between these our said colonies by the agents thereof, who have also agreed, that the said Paucatuck River shall be also called, alias Narraganset-River, and to prevent future disputes, that otherwise might arise, for ever hereafter shall be construed, deemed, and taken to be the Narraganset-River, in our late grant to Connecticut colony, mentioned, as the easterly bounds of that colony."

No. XXV.

Abstract of an answer of Connecticut to marquis Hamilton's claim.

"**W**E humbly present, that the grant of Connecticut to certain nobles and gentlemen, which we purchased for a considerable value was precedent to that of marquis Hamilton's several years. Also we present, that with much difficulty we have conquered a potent, insolent and barbarous people, &c.---and the most part of that country claimed is very rocky and incommodious, as to improvement, &c.---and a small recompence for the lives and estates that have been spent in securing his majesty's interest from the Dutch and other foreigners, &c.---The effect whereof hath been and is a quiet and peaceable possession of this place for about thirty years, without either trouble from abroad, or claim made by any of his majesty's subjects, to the premises, that we have heard of. "We humbly crave it may be further considered that his majesty our gracious sovereign, was pleased of his abundant favor and grace to his poor subjects of this colony so far to declare his free reception of the reasons forementioned, of our purchase made and conquest, &c.---besides our great labour, &c.---as to insert them as motives to the late renewal of our charter."

"**W**e humbly crave further, that your honors will be pleased to represent to his majesty our humble and thankful acknowledgment of his majesty's abundant grace in the late renewal of our charter : and likewise his more abundant grace in re-ratifying our privileges both civil and eccle-

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ecclesiastic, in his late gracious letter, sent to us, by your honors."

This seems to have been presented to the commissioners in 1664.

No. XXVI.

Plea on the same subject, March 25, 1665.

1665. "WE humbly conceive that the original patent granted from royal authority to the lord Say and Seal and others, nobles and gentlemen which we purchased at a dear rate, is lately ratified and confirmed by our gracious sovereign, under the broad seal of England, the most absolute and unquestionable security of the English subjects, in which grant the lands forementioned are comprised.---The grant to Connecticut was precedent to that of duke Hamilton, several years, which gives us to conclude, that propriety of title will be settled upon priority of grant. The bounds of our charter, as to the eastern limits, are not newly devised, but was so described in a grant made formerly to some lords and gentlemen, bearing date 1631, which at a dear rate was purchased by the colony of Connecticut." We have had peaceable possession these thirty years, &c.---It was conquered by the people of Connecticut, &c.---His majesty, &c.---was pleased, &c. so far to declare his free reception of the reasons forementioned, &c.---as to insert them, as motives to that late renewal of our charter," &c.

In 1683 king Charles II. gave a commission to Edward Cranfield, Esq; lieutenant governor of New-Hampshire, William Houghton, Joseph Dudley, Edward Randolph, Samuel Shampton, John Fitz Winthrop, Edward Palmes, John Pincheon and Nathaniel Saltonstall, Esqrs; authorizing them to examine and enquire into all claims and titles both of his majesty, and of all persons and corporations whatsoever respecting the Narraganset country, at that day, commonly called the king's province.

They summoned all persons and corporations interested in said country, to appear before them, at the house of Mr. Richard Smith, in the Narraganset country, on the 22d of August 1683, at which time and place, there "was

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" the greatest appearance of the most ancient English and Records of the " Indians, that were then living, to testify king's province. " the truth of their knowledge," &c.

The commissioners adjourned to Boston, and there " made their report to his majesty, in a full and ample " manner, declaring that the government of the country " belonged to Connecticut," &c. This report so far as it respecteth Connecticut, and can reflect light on the controversy in hand, is as followeth, viz.

No. XXVII.

Oct. 20. " **I**N humble obedience to your majesty's com-
1683. mands, we your majesty's commissioners, &c.,
---have sincerely and seriously considered the several claims before us, &c.---We find, &c.---That your majesty by your letters patents, dated at Westminster the three and twentieth of April, in the fourteenth year of your majesty's reign, your majesty granted to the governor and company of Connecticut and their successors, all that part of your dominions in New-England, bounded on the east by Narraganset-river, commonly called Narraganset-bay, where the said river falleth into the sea, and on the north by the line of the Massachusetts plantation, and on the south by the sea," &c.---

" We have also had information, that some time after your majesty's grant, and said patent was sent to your colony of Connecticut, the said country of the Narraganset was likewise, by patent, granted by your majesty to [the] governor and company of Rhode-Island plantation, and is by charter bounded by a river called Pauquatuck, which, by said charter, is forever to be accounted and called the Narraganset-river: and this latter grant of your majesty, to Rhode-Island, seems to be founded upon advice submitted to by John Winthrop, Esq; said to be agent for Connecticut colony, and Mr. John Clark agent for Rhode-Island; to which the agents of Connecticut plead that Mr. Winthrop's agency for them ceased, when he had obtained and sent the patent to them, and that no submission or act of his could validate," [I suppose it should be invalidate,] "or deprive them of any of the benefits graciously granted

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granted by your majesty's charter : and that notwithstanding the seeming boundaries, set by the said articles, signed by Mr. Winthrop and Mr. Clark, it's in the same articles provided, that the proprietors and inhabitants of the Narraganset country shall chuse to which of the two governments to belong, and that they unanimously chose and subjected to the government of Connecticut," &c.

" With humble submission, we cannot see any cause to judge that the said Pauquatuck river anciently was, or ought to be called or accounted the Narraganset river.

1st. Because it lies some miles within the Pequot country, a nation still extirpated by the English, often or always at war with the Narragansets, and to which territories the Narragansets never pretended."

" Because Pauquatuck river falls into the sea, many miles westward of any part of the Narraganset bay, [*which**] is the river *anciently called Narraganset river*, both because it on the eastward washes and bounds the whole length of the Narraganset country †; and for that Plymouth colony, which hath now been planted near three score years, have ever since bounded themselves, according to the sense and meaning or limitation of their patent, by the same bay, called Narraganset river towards the south," &c.

" Thus after most strict and impartial inquiry and examination, having stated, we most humbly lay before your majesty the several original claims and pretensions offered to us with respect to the propriety both of jurisdiction and soil, in your majesty's province or Narraganset

* One or two small words seem to have been omitted, in the original paper, necessary to complete the sense, which I have supplied, and give notice of it, by including them in crotchets.

† Here we have the clearest evidence, that the words in the charter, " commonly called Narraganset bay, where the said river falleth into the sea" are descriptive of that particular river called Narraganset river. By this description it is distinguished from all other rivers, and the eastern boundary of Connecticut is fixed in the most definite manner. This at once overthrows all Dr. Smith's reasonings, if they may, indeed, be called by that name, relative to the location of lord Say and Seal's patent ; for they are all built upon this supposition, that Connecticut is bounded on the east, at a mere point, where Narraganset river falls into the sea.

set country; and, in farther obedience to your said commission, have seriously weighed and considered all evidences, pleas, proofs and allegations, &c.---and with most humble submission and reservation of your majesty's right, ---offer our opinions, That by virtue of your said letters patents, granted to Connecticut, jurisdiction in, and thro' the said province, or Narraganset country, of right belongs to the colony of Connecticut, and that propriety of soil, as derived from Mr. Winthrop and Major Atherton, is vested upon the heirs and assigns of said Mr. Winthrop, the heirs of Thomas Chiffinch, Esq; Major Atherton, Mr. Richard Smith, Mr. Simon Lynde, Mr. Elisha Hutchinson, Mr. John Saffin, Mr. Richard Wharton, and partners," &c.

" FINALLY, we hold it our duty humbly to inform your majesty, that so long as the pretensions of the Rhode-Islanders to the government of the said province continue, it will much discourage the settlement and improvement thereof; it being very improbable, that either the aforementioned claimers or others of like reputation and condition will either remove their families or expend their estates under so loose and weak a government," &c.

Your majesty's most loyal and obedient subjects,
Boston, Oct. 20th, 1683,

EDW^d CRANFIELD
WILLIAM HOUGHTON
SAM^l SHRIMPTON
JOHN PINCHEON, junr.
NATH^l SALTONSTALL,"

Edward Randolph, Esq; presented a petition to the commissioners, in behalf of duke Hamilton, respecting his claim to the lands comprised in his patent. To this answers were made both by the proprietors, and by Connecticut.

No. XXIX.

Mr. Saffin's answer November 1683.

1683. "THE ends aimed at and propounded in the king's charter to the great council of Plymouth, was the propogation of the gospel among the heathen, and the enlargement of his majesty's empire by plantation,

plantation : and whatsoever grants were made by said council were founded upon those considerations ; which being not pursued, rendereth all grants of land void. *Qui sentit commodum, incommodum sentire debet et onus*”.

And it doth not appear that his grace (as other patentees) did transport any person, or plant any colony, nor used any other means, either to instruct the natives or purchase their right in the lands, or appointed any agent to take possession, in order to the improvement of the same. But it is probable that the duke understanding a former patent was granted, by the council of Devon, to the lord Say and Brook, &c. in or about the year 1631, and purchased and improved by his majesty's colony of Connecticut, might divert him from any procedure therein. The copy of said patent, as we have been informed, when exhibited by John Winthrop, Esq; before the king in council, the then lord chancellor Hide declared, the lord Say and Brook's title to be good and unquestionable, and upon that interest, we presume, it was, that Connecticut made application to his majesty, and that their charter was granted ; the lords Say and Brook, and partners, having expended nine thousand pounds in settlement of the lands claimed by his grace ; and had made considerable improvements and fortifications upon the said lands, in several places, divers years before the date of duke Hamilton's grant.”

“ Our present gracious sovereign, &c. hath by his royal letters manifested his approbation of the purchase, possession, and improvement of his loyal subjects, the proprietors here &c.”

“ The said proprietors have been necessarily engaged in a bloody and chargeable War with the Indians, in their late rebellion.”

“ We further humbly offer, that in regard, that the copy of the duke's deed, presented by Mr. Randolph, in behalf of his grace, seems to have no signification of any hand or seal affixed to it, nor mention made of any witnesses, said to be to the original instrument (yet affirmed to be a true copy thereof,) it may be presumed the said original deed was never completed according to law.” No.

No. XXX.

Answer of the governor and council December 13, 1683.

1683. " **A**S to the substance of the dukes claim, so far as it concerns us, it is preceded some years, by a grant from the right honorable Robert earl of Warwick to the lord Say and other persons of honor and credit, March 19, 1631,---whereas his grace's deed was made four years after, viz. on the 20th, of April 1635, &c.

" By virtue of his majesty's grant to lord Say &c. they and their assigns, our predecessors did at their own proper charge, about the year 1634, begin to enter upon the said lands, and so have continued ever since, in actual possession and improvement thereof, without challenge or claim from duke Hamilton : which improvement hath been with great cost, hazard and labour of his majesty's subjects ; yet by the blessing of God, and his majesty's grace, hath in a good measure answered the ends of those grants or patents ; as the propagating the Christian religion, and the encrease and enlargement of his majesty's empire : of all which, his grace duke Hamilton, hath, in these parts, done nothing that we know of."

" His present majesty understanding the condition of his subjects in this colony, upon our humble address April 23, 1662, was graciously pleased to grant us a charter, for holding the lands therein granted, firm to us and our successors forever : and in his letters, dated April 23, 1664, sent to us by his majesty's honourable commissioners, he is pleased to call his grant a renewing of our charter, which must relate to that grant made by the earl of Warwick in the year 1631 ; for we had no other, before his majesty's grant and confirmation aforesaid."

" Under these securities and encouragements we laid out our estates, labours, &c---and suddenly after our first settling---we were engaged in a bloody war, anno 37, with the Pequots---which was exceeding chargeable and expensive to us. Also, in the year 1675, a great people, who inhabited the Narraganset country, rose up against his majesty's subjects, who were planted in these parts, slew many of them, burnt their houses, and destroyed their cattle, where-

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by we were engaged in another bloody war, which was the cause of great expence of blood and treasure, (his grace, duke Hamilton, being no partaker with us, in any of those expences, or helper of us therein,) and by the assistance of Almighty God, and countenance of his majesty, in both these forementioned wars, we overcame our enemies that rose up against us, without which all our grants would have been of little benefit to us."

"It is required by his majesty's good laws, as in the twenty one of king James, 16, that the duke, and all others, should have sued out his claim, and we have thereby an acquittance from such claims: The reason of which law as it is very great, so it is pleadable on our account, for it being latent unto us, for near fifty years, would prove our ruin, if there upon our property be altered. Had the duke's grace or his predecessors timemously set his claim, in competition with the lord Say's patent, (that we had purchased) the people had known how to have applied themselves: but after half a century's settlement as aforesaid, we hope his majesty will be pleased to secure the same to his good subjects here."

We desire that we may have a more fit opportunity to make a more full answer, and to present our proof †." &c.

"Per order of the governor and council,

signed per me

JOHN ALLYN, Secretary."

OPINIONS ON THE CASE.

No. XXXI.

Mr. Trevor's opinion.

"May it please your honors,

"IN obedience to an order of reference, of the right honorable the lords of the committee of *trade and plantations*, signified to me, by Mr. Povey, the 22d of May, 1695, upon the petition of Wait Winthrop and others, concerning the settlement of the king's province or Nar-

raganset.

† When this plea was made, the governor and company had not seen a copy of duke Hamilton's grant. They say, "as to the legacies of his grace's deed, whether all things necessary to the making of the same firm and good in law be attended, we understood not."

raganset bay in New-England ;" I have considered of the said petition, and do find, that king Charles the 2d, by letters patents, bearing date the 23d day of April, in the fourteenth year of his reign, granted to the governor and company of Connecticut, and their successors, Narraganset's bay in New-England, together with all firm lands, soils, grounds, havens, ports, rivers, waters, fishings, mines, minerals, precious stones, and all, and singlar other commodities, and jurisdictions whatsoever : Reserving to his majesty, his heirs and successors, the fifth part of the oar of gold and silver only."

" That after the said grant, viz. in July 1663, the said country of Narraganset bay, was, by letters patents, granted to the governor and company of Rhode-Island plantation."

" But I am humbly of opinion, that this grant to Rhode Island is *void in law*, because the country of Narraganset-Bay was granted before to Connecticut, and that therefore the government of Narraganset-Bay doth, of right belong to Connecticut, and not to Rhode Island : all which is humbly submitted to your Honours great Wisdom."

October 28th, 1696.

THO'S. TREVOR."

No. XXXII.

Sir Francis Pemberton's opinion of the case of the purchasers and proprietors of the lands in the Narraganset country.

Abstract of the case.

" **K**ING James I. by letters patent incorporates the duke of Lenox and divers other persons by the name of the great council of Plimouth, &c.---Grants to them and their successors all the lands &c. in America, between 40 and 48 degrees of notherly latitude."

" The said council of Plimouth, who never had possession of said land, the 2d. of April 1635, grant to M. H. and his heirs all that part and portion of the main lands of New-England, beginning at the mouth of Connecticut river, and from thence to Narraganset-River, to be accounted sixty miles in length and breadth, and all Islands within five leagues distance of the premises."

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Agreement

1703.

“ About the same time the said grant was made to M. H. or soon after, several persons, his majesty's subjects living in New-England, (but without any notice or knowledge of the said grant to M. H.) purchase of the Indian princes, divers parcels of land lying within the limits of the said grant &c. particularly an Island called Rhode-Island, and great part of a tract of land called Connecticut, Narraganset, Warwick and other places, &c.---which places have been possessed by the said purchasers &c. ever since the said several purchases;---the said purchases have been always approved of by the several governments there;---never disallowed, towns have been built, many farms and plantations settled, great treasure laid out and several descents cast.”

“ M. H. nor his heirs or any deriving from him, have never had possession, nor laid out any thing upon the premises, nor made any claim, in the said country, until the year 1683, which was about 48 years after the said grant; the said heir by his attorney, claimed the said lands at Boston in New-England, which is above 70 miles from the premises; and in another country.”

“ The heir of said M. H. after three-score and two years, demands the said premises or a quit-rent.”

Opinion on the case.

“ I am of opinion,---that the heir of M. H. after such purchases, and so long and quiet enjoyment of them, &c.---ought not,---to recover any of the said lands or grounds or quit-rents out of them.”

“ I am of opinion, that these purchasers, by virtue of their purchases, and so long and uninterrupted possession under them, have an undoubted right and title to these grounds and lands, and the buildings, and improvement of them, and ought not now after so much money laid out upon them, and such enjoyment of them, be disturbed in their possession of them.”

FR. PEMBERTON.

No. XXXIII.

Agreement between the commissioners of Connecticut and Rhode-Island May 12, 1703.

1703. **T**HAT the middle channel of Pauquatuck;
alias Narraganset river, as it extendeth
from

from the salt water upwards 'till it come to the mouth of Ashaway river, where it falls into the said Pauquatuck river, and from thence to run a strait line 'till it meet with the southwest bounds or corner of Warwick grand purchase, which extends twenty miles due west from a certain rock, lying at the utmost point of said Warwick neck, which is the southeasterly bounds of said purchase, and from said southwest bounds or corner of said purchase to run upon a due north line till it meet with the south line of the province of Massachusetts Bay in New-England.

"This to be, and forever remain to be, the fixed and stated line between the said colonies of Connecticut and Rhode-Island."

"Always provided, and it is hereby intended, that nothing in the aforementioned agreement, or any clause thereof, shall be taken or deemed to the breach, or making void, of the fourth article in the agreement made between the agents of Connecticut and Rhode-Island, viz. John Winthrop, Esq; and Mr. John Clark for maintaining of property, dated April 7th, 1663, but that the same shall be kept and justly performed according to the true intent and meaning thereof; and that all former grants, and purchases granted by, or made within either of the said colonies, and all other ancient grants confirmed by the authority of Connecticut colony, within the township of Westerly in the colony of Rhode-Island shall be duly preserved and mainted, as fully and amply to all intents and purposes, as if they were lying or continued within the bounds of the colony; by the authority of which it was granted or purchased."

"In confirmation, &c. we have set our hands, &c. in the second year of her majesty's reign, Queen Ann, &c. 1703, 12th May.---

"NATHAN GOULD and a Seal;

JOSEPH SHEFFIELD and a Seal.

HENRY CROW and a Seal.

THOMAS HART and a Seal.

WEST CLARK and a Seal.

JOHN DEXTER and a Seal.

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PETER BURR and a Seal.

RANDAL HOLDEN and a Seal.

EBENEZER JOHNSON and a Seal."

The commissioners from Connecticut were plenipotentiaries, and Connecticut expected that the commissioners from Rhode-Island would have been vested with the same powers: However it afterwards appeared that they were not. Rhode-Island fell from the agreement, and by their agents, Joseph Jencks and Richard Patridge, preferred a petition to his majesty, "praying, that their boundaries might be settled and confirmed to them according to their charter." His majesty referred the petition to the Right Honorable the lords of the committee of council. They reported in favor of the line agreed upon by the commissioners of Connecticut and Rhode-Island in 1703.

No. XXXIV.

Report of their lordships, Jan. 20, 1726.

1726. **T**HO' the red line in the annexed map is what the Rhode-Island people insist on, as the true boundary between them and Connecticut, according to their charter; yet as the green line in the said annexed map was determined, in 1703, † to be the division line between the two colonies, by the commissioners of each government respectively appointed for that purpose--- We are humbly of opinion to advise your majesty, that you would be graciously pleased to signify your pleasure that the boundary line between the said two colonies, as described by the aforesaid green line drawn from the mouth of

† The report of their lordships, and his majesty's determination, seem to be founded wholly on the agreement in 1703, and on two letters written by Connecticut on the subject; one to the commissioners of trade and plantations, and the other to their agent, Mr. Dummer; in which they intimate that if the agreement, in 1703, should be established they should give no further trouble in the affair; and that notwithstanding the priority of their charter to that of Rhode-Island, they were willing to submit the matter to his majesty, and that his determination would, on their part, put a perpetual end to the controversy. Thus by the concessions of Connecticut, Rhode Island obtained a territory, which after sixty years controversy, and after repeated opinions and determinations on the case, was never in one instance adjudged to them, and which, in law, probably, they never could have obtained.

of Ashaway river, where it falls into the Paucatuck river, and thence extending north to the south line of the Massachusetts-Bay, may forever hereafter be the settled boundary between the said two colonies of Connecticut and Rhode-Island and Providence plantations."

No. XXXV.

Determination of his majesty in council.

Feb. 8.
1726.

HIS majesty in council taking the said report into consideration, is pleased to approve and confirm the same, and to order, as it is hereby ordered, that the aforementioned green line, as described in the map hereunto annexed, drawn from the mouth of Ashaway River, where it falls into Paucatuck River, and thence extending north to the south line of the Massachusetts-Bay, be forever hereafter the settled boundary, between the said two colonies of Connecticut and Rhode-Island and Providence plantations---Whereof the governors and companies of the said colonies, and all others whom it may concern are to take notice and yield due obedience to his majesty's pleasure hereby signified."

TEMPLE STANYAN.

TRANSACTIONS relative to the western lands.

No. XXXVI.

Extracts from a letter of the committee of the Susquehannah company to governor Trumbull, March 27, 1771.

IT is well known to governor Penn, That our Susquehannah company, with the countenance of the governor of this colony, for a very large sum of money did purchase of the Indian natives, called the six nations, at a full council held at Albany, at the congress met there, in the year 1754, their interest and title to the lands at Wyoming, on the Susquehannah river, lying and being within the bounds and limits of Connecticut."

"In the year 1763, the time when our people first went from hence to settle those lands, the same was uninhabited, by either English or Indians, the settlers went peaceable into possession," &c.

"The same year our company employed Eliphalet Dyer, Esq; to repair to the court of Great-Britain to do and act for us in this affair."

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"The general assembly of the colony of Connecticut relying on the title of the colony to those lands, by us purchased as aforesaid, being clearly within the bounds and limits of the royal charter, desirous to promote his majesty's interest, the defence of the colonies, and the public good of our company, great numbers of us being inclined to become inhabitants on those lands, did humbly recommend it to his majesty's wise and paternal determination, to send us forth as a colony, and establish civil government with powers and authorities under him there."

No. XXXVII.

An Act of Assembly, in Favour of the Susquehanna Company.

Anno Regni Regis GEORGE II. Viceffimo Octavo.

At a General Assembly of the Governor and Company of the Colony of Connecticut, holden at Hartford, on the second Thursday of May, Anno Domini 1755.

"UPON the Petition of Phineas Lyman, Roger Wolcott, junr, Samuel Gray, Abraham Davenport, Esquires, and others, their Associates, to the Number of about Eight Hundred and Fifty, known by the Name of *The Susquehanna Company*, by their Agents George Wylls, Daniel Edwards, Samuel Talcott, Thomas Seymour, and Eliphalet Dyer, representing that the Colony, according to the express Limits of its Royal Charter, is in Extent from the Narraganset-Bay on the East, to the South-Sea on the West, and from the Sea Shore on the South, to the Line of the Massachusetts Province on the North;---that within and towards the Western Part of its Limits, are, and Time immemorial have been, large Numbers of the Indian Nations, commonly called the Six Nations, dwelling, improving and claiming a large Extent thereof---that a certain large Parcel of such their Claim, situate and lying on the Waters of the Susquehanna, about 70 Miles North and South, and from about 10 Miles East of said River, extending Westward two Degrees of Longitude, they the said Indian Nations (not) finding necessary for their own Use, have, for very valuable Considerations, been induced to relinquish, and to sell to the said Petitioners, and that some well ordered Plantation, in so near a neighbourhood

to the said Nations, might most likely be a Means to cement and fix them in Friendship with his Majesty's Subjects--and that they, the said Indian Nations, are desirous such Settlement might be promoted and carried on, as being conducive to their Interest and Safety; and thereupon praying the Consent of this Assembly, that his Majesty, if it shall be his Royal Pleasure, grant said Land to the Petitioners, and their Associates, thereon to erect and settle a Colony, for the more effectual securing said Indians in his Majesty's Interest, and Defence of his Majesty's Dominions in North-America, with Liberty of further Purchases of said Indians to said Purpose, as Occasion may be.

"Resolved by this Assembly, that they are of Opinion that the peaceably and orderly erecting and carrying on some new and well regulated Colony or Plantation, on the Lands above-mentioned, would greatly tend to fix and secure said Indian Nations in Allegiance to his Majesty, and Friendship with his Subjects, and accordingly hereby manifest their ready Acquiescence therein, if it should be his Majesty's Royal Pleasure to grant said Land to said Petitioners, and thereon erect and settle a new Colony, in such Form, and under such Regulations, as might be consistent with his Royal Wisdom--and also take Leave, humbly to recommend the said Petitioners to his Royal Favour in the Premises."

The agent of the Susquehannah company presented a petition to his majesty, shewing their right to the lands in controversy, "praying his majesty to order and allow them to become colonists on the same, and grant them privileges, powers, and authorities, as in his great wisdom and goodness he should think fit." This petition still lies before the throne*.

In the May sessions 1770, the assembly determined to transmit a state of the case to counsel learned in the law, in England, and ask their opinion on the claim and title of the colony. This was entirely in favor of the colony.

Upon

* Dr. Smith represents this petition as having been dismissed, but it seems to be a mistake; it was the petition of the proprietaries praying that Connecticut might be called upon to declare whether they laid claim to the contested lands or not, which was dismissed.

Upon the reception of this the assembly in October, 1773, determined to assert their claim.

No. XXXVIII.

At a general assembly of the governor and company of the colony of Connecticut, holden at New-Haven on the second Thursday of October, A. D. 1773.

RESOLVED that this assembly at this time, will assert their claim, and in some proper way support such claim to those lands contained within the limits and boundaries of the charter of this colony, which are westward of the province of New-York.

R E M A R K S.

No. XXXIX.

UPON this extensive view of the case in hand, have we not clear evidence, that the Connecticut planters were, to all intents and purposes, the assignees of lord Say and Seal, lord Brook, &c. and that they considered themselves, and were viewed by their lordships, and by his majesty, as having a just right and title to all the lands comprised within the deed to lord Say and Seal, &c.--- If this had not been the understanding of both parties, we cannot imagine that Connecticut would have written to his lordships as they did, reminding him of former assurances given them, intreating his countenance and help in a petition to his majesty, in which they prayed, That the grant made to their lordships Say and Seal, lord Brook, &c. might be confirmed to the colony of Connecticut.--- Nor can it be supposed that lord Say and Seal would have written as he did to the lord Chamberlain to afford Mr. Winthrop all the help he could in this affair, and given direction how the patent might be found, had it not been his opinion that said lands of right belonged to Connecticut, and had it not been his design, that they should all be confirmed unto them by royal charter.

It is on this supposition only that the ancient fathers of this colony can be vindicated in their repeated declarations that they had purchased the patent of lord Say and Seal, lord Brook, &c. and were their assigns. Indeed we

CANNOT

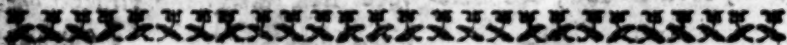
cannot suppose that they would have thus constantly affirmed this, and desired opportunity to prove it, if it had not, in fact, been the case.

As to duke Hamilton's claim it appears to have been void of all foundation. His deed was never executed, and consequently is no better than a blank. It is hoped that Connecticut will no more be alarmed by formidable accounts of the duke's claim and title.

It is natural further to remark, from the facts stated in the Appendix, that the charter hath been ever considered by his majesty, by his commissioners, and all counsel who have given their opinion relative to it, or lands claimed by it as a legal conveyance of all the lands comprised within the boundaries therein described to all intents and purposes. There hath been a strict and invariable attention given to it, in every case, and Connecticut have never lost any lands granted by it, unless by their own voluntary concessions.

Further it is evident that Connecticut have purchased, conquered, and settled, considerable tracts of land, especially on Long-Island and in the Narraganset country, which in obedience to his majesty, and for the advancement of the royal interest, in other colonies, they have yielded and given up to their jurisdiction.---This doubtless ought to be pleaded as an argument in their favor, why they should possess such other lands as are amply granted to them, by their charter; and which they have both purchased and settled.

May not Connecticut, after all these services performed for his majesty, in saving such an extensive territory out of the hands of the Dutch, in conquering two powerful heathen nations, and in making so many settlements and defending them for so many years, wholly at their own expense, expect a favorable reception from his majesty? Will he not vindicate their just rights, and grant them whatever they justly claim with all that pleasure which royal minds experience in the impartial administration of justice.?



ERRATA.

Page. line.

- 6 5 for know read *known*.
19 2 read *began*.
24 14 for twenty read *twelve*.
31 11 between it, and doth, insert (*the river*).
36 17 from the bottom, read *settlements*.
40 11 from the bottom, for shewed read *shown*.
41 15 for than, read *then*.
46 10 for effect, read *affect*.
ibid. 10 from the bottom, for to a farm, read *of a farm*.
51 15 for he, read *we*.
54 12 from the bottom, between of, and all, insert *it*.
57 5 from the bottom, read *regard*.
67 5 for barr, read *bar*.
77 21 for of, read *with*.
ibid. 4 from the bottom, after in, dele *the*, and for
same, read *some*.
88 10 for large, read *larger*.
93 11 for loose, read *lose*.
98 21 read *admirable*.
106 9 from the bottom, for set, read *fit*.
111 3 between patent, and certain, insert *to*.
119 for Marverick, read *Maverick*, also in p. 120.
124 11 from the bottom, for council, read *counsel*.
151 10 between that, and the, insert *within twenty*
ibid. 16 read *timously*. (years).
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STAT

The first of the year 1800
was a day of great importance
to the people of the United States
as it was the day when the
new government was inaugurated
and the first session of the
Congress was opened. The
President of the United States
was John Adams, and the
Vice President was Thomas
Jefferson. The first session
of the Congress was held in
New York City, and the
first business was the
reading of the Declaration of
Independence. The Congress
then proceeded to the
business of organizing the
new government, and the
first act was the passage of
the Judiciary Act of 1789.
This act established the
Supreme Court of the United
States, and provided for the
organization of the lower
courts. The first session of
the Congress was a success,
and the new government was
inaugurated in a peaceful
manner.